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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 2nd February 2024

No. 13/1/9752-HII(2)-2024/1861.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **67/2020** dated **06.11.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

JAI HIND KUMAR C/O RAM CHANDER MISTER, STREET NO.17, HAMAYUPUR, SIRHIND,
NEAR ARMY HOSPITAL, DISTRICT FATEHGARH SAHIB. (Workmen)

AND

1. M/S DAINIK BHASKAR CORPORATION LIMITED, PLOT NO. 280, SARKHEJ GHANDINAGAR HIGHWAY, NEAR YMCA CLUB, MAKARBA, AHMEDABAD, GUJARAT - 380051 THROUGH ITS MANAGING DIRECTOR.
2. M/S DAINIK BHASKAR CORPORATION LIMITED, CHANDIGARH UNIT, PLOT NO.11-12, GROUND FLOOR, DAKSHIN MARG, SECTOR 25, CHANDIGARH - 160036 THROUGH ITS CHIEF EXECUTIVE. (Management)

AWARD

1. Vide Endorsement No.13/1/9752-HII(2)-2020/11723 Dated 04.09.2020 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the claim application filed by Jai Hind Kumar (*hereinafter referred "claimant"*) to the M/s Dainik Bhaskar Corporation Limited & Another (*hereinafter referred "management"*) under Section 17(1) of the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (*hereinafter in short referred "Act 1955"*) in following words:—

Signature Not Verified
Digitally Signed by
Jainder Kumar
On 19/02/2024 at 15:41:13 IST
Reason: Published
Location:

"Whether the arrears of revision of pay to namely Sh. Jai Hind Kumar, Resident of c/o Ram Chander Mistre, Street No.17, hamayupur, Sirhind, near Army Hospital, District Fatehgarh Sahib (Workman/applicant) were to be paid by M/s Dainik Bhaskar Corporation Limited, Plot No.280, Sarkhej Ghandinagar Highway, Near YMCA Club, Makarba, Ahmedabad, Gujarat - 380051 through its Managing Director and

(309)

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M/s Dainik Bhaskar Corporation Limited, Chandigarh Unit, Plot No.11-12, Ground Floor, Dakshin Marg, Sector 25, Chandigarh - 160036 through its Chief Executive (Managements) according to the recommendations of the Majithia Wage Board and also as per the direction of the Hon'ble Supreme Court of India under The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provision Act, 1955 and in compliance of the orders dated 28.04.2015, 12.01.2016, 14.03.2016, 23.08.2016 passed by the Hon'ble Supreme Court of India in CCP No.128/2015 and 129/2015 AND WP (Civil) 246/2011 dated 07.02.2014; if so, to what effect and to what relief he is entitled to, if any ?"

2. Upon notice, the claimant-workman appeared through his Representative Shri Ajay Sharma. Statement of claim was filed on 26.03.2021.

3. Briefly stated the averments of claim statement are that the claimant was working as Unit Attendant with Dainik Bhaskar Newspaper having its registered office at Sector 25, Chandigarh. On account of revision of pay & other allowances accrued on the acceptance of the recommendations of the Majithia Wage Board which were accepted by the Government of India and notified in the Gazette of India on 11.11.2011, a substantial amount is due from Dainik Bhaskar / employer which is denied. On account of fact that a large number of persons are employed in the various newspapers and periodical being published in India and such newspaper or periodical establishment had devised its own way of employing persons to run its working, the Government of India constituted the Press Commission to enquire into the conditions of employment of working journalists. The Press Commission made certain recommendations for improvement and regulation of such service conditions by means of legislation. Accordingly, The Working Journalists (Conditions of Service) and Miscellaneous Provisions Bill was introduced in the Parliament. Consequently, on 20.12.2015 the Act 1955 was enacted to regulate certain conditions of service including minimum period of notice, gratuity, provident fund, settlement of industrial dispute, leave with pay, hours of work and minimum wages of the Working Journalists and the other persons employed in the Newspaper Establishments. From the harmonious joint reading of the provisions of the Act 1955, it is apparent that the Central Government has been competent to fix and revise the wages of the journalists and other employees having been governed by the Act 1955. A procedure has been laid down for fixing and revising rate of wages for which a mandate is casted upon the Central Government to constitute a Wage Board in the manner prescribed in it, which shall examine all the relevant factors like cost of living, the prevalent rate of wages for comparable employment etc. for the ascertainment of the rate of wages and thereafter present its recommendation to the Central Government. On the receipt of such recommendation by the Wage Board, the Central Government is also competent to accept, reject and alter any of the recommendations as may deemed fit. Consequently, the Central Government shall notify the recommendations by way of an Award in the official Gazette of India. In pursuance to an exercise undertaken by Department of Labour and Employment, Union of India under Section 9 of Act 1955, the purpose of enabling the Central Government to fix or revise rate of wages for the working journalists and non-journalists newspaper employees, a Wage Board was constituted under the Chairmanship of Hon'ble Mr. Justice G. R. Majithia (Retd.) and the Wage Board was commonly known as Majithia Wage Board. After examining all the relevant factors regulating the revision of pay and affording opportunity to all the affected parties, the Majithia Wage Board finally submitted its recommendations on 31.12.2010 to the Union of India. On 25.10.2011 the Union of India accepted the same in toto without any modification. The said recommendations were further notified in the official Gazette vide notification dated 11.11.2011. On the publication of the recommendation of the Majithia Wage Board by way of an Award vide Gazette Notification dated 11.11.2011, various newspaper establishments and media houses vide W.P. (C) No.538 of 2011 had made a challenge under Article 32 of the Constitution of India before the Hon'ble Supreme Court of India alleging Act 1955 being *ultra-vires* as it infringes the fundamental rights guaranteed under Article 14, 19(1)(a) and 19(1)(g) of the Constitution of India. There was also a challenge to the validity of notification dated 11.11.2011 issued by the Union of India. The bunch of aforesaid petitions remained pending for hearing before the Hon'ble Apex Court for 3 years and

ultimately while disagreeing with the contentions raised by the newspaper establishments and media houses, the Hon'ble Apex Court dismissed all the petitions vide its judgment dated 07.02.2014 while holding that the recommendations of Majithia Wage Board are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India. Despite the dismissal of the Writ Petitions challenging the validity of Act 1955 and notification dated 11.11.2011, and further directions of the Hon'ble Apex Court for payment of arrears, no compliance was being made by the news agencies. The employees had also taken up their issue before the management No.1 & 2 for payment of revised wages and arrears as per the directions of the Hon'ble Apex Court, however, they were told that a review application have been preferred by them and further course of action would be taken up after its adjudication. Another order dated 13.10.2017 was passed by the Hon'ble Apex Court clarifying the previous judgment dated 19.06.2017 to the extent that the disputes referred to adjudication under Section 17(2) of the Act 1955, will be disposed of by the concerned Labour Court / Industrial Tribunal as expeditiously as possible preferably within six months of the reference being made.

4. It is further averred that the claimant was appointed as Unit Attendant in the Production Division of Dainik Bhaskar Newspaper on 12.06.2009. The salary of the claimant was fixed @ ₹ 6,000/- per month including all perks and allowances. Initially he was on probation for 6 months and later on his services were regularised. Management No. 2 had further re-designated the claimant as Unit Attendant on 01.04.2016. The services of the claimant were being regulated under the Act 1955. Employees have been categorised in groups and as such the claimant falls within the ambit of Group 6 Factory Staff from 12.06.2009 and Group 5 Factory Staff from 01.07.2019 as the claimant has not got any promotion since 2009 as such eligible for 1 Group higher as per clause (f) of point No.20 of page 19 of Majithia Wage Board for ACP. In the month of February, 2019 the claimant along with other employees has also been cautioned by the management that in case, they press upon their demand of recovery of dues, then they would be either transferred at other far distant places or their services would be terminated. Despite above, the claimant had been pressing his request of payment of arrears of salary as per the Majithia Wage Board recommendations upon the management No. 2, however, management No.2 started harassing the claimant by rejecting his leave applications, deploying at odd places, giving work out of his job profile and letting the claimant jobless for days together. Still the claimant has been continuously discharging his duties till date. The amount which is liable to be recovered from the management based on revised pay on the basis of Majithia Wage Board is legitimate dues of the claimant and as such the claimant is not willing to forego the same in any manner. The claimant has got calculated his estimate revised salary and arrears of pay from a competent Chartered Accountant as per the Majithia Wage Board recommendations w.e.f. 11.11.2011 to 01.02.2021, as such the total amount of ₹ 86,75,439/- including interest @ 18% per annum is due from the management. Despite the demand of detailed arrears of salary calculated as per Majithia Wage Board recommendations w.e.f. 11.11.2011 to 01.02.2021, the management has intentionally and deliberately not been implementing the recommendations of the Majithia Wage Board and has not given any benefit to the claimant in spite of several oral and written requests. The claimant has not signed any declaration in order to waive of the benefits accrued under the Majithia Wage Board recommendations. The management had indulged in the process of denying the claims stating that the recommendations of the wage board were not applicable on the claimant and other employees and forcing the employees to sign on pre-typed formats and declarations illegally. The employees refusing to do so were being victimized by way of illegal transfer, suspension and other colourable exercise of the powers of the management and a reign of terror inside the establishment had been created by the management. The management be asked to furnish the details of the salary paid to the employee of the establishment before 07.02.2014 and being paid now and the reasons for non-implementation of the recommendations of the Majithia Wage Board by the management. The present claim is without prejudice to the rights of the claimant to the Contempt of Court proceedings against the management for its deliberate, willful and intentional violation of the order dated 07.02.2014 of Hon'ble Supreme Court. The cause of action of the claimant is continuous. As such, the present claim is being filed within period of limitation. The claimant has not filed any other claim or petition before any Court of Law except the present one. The

claim application is accompanied with calculation sheet Annexure 'A3'. Prayer is made that Award may be passed directing the managements to implement the Majithia Wage Board recommendations and re-fix the pay of the claimant accordingly with further prayer directing the managements to release arrears of pay to the tune of ₹ 86,75,439/- as per Annexure 'A3' with costs and to pay interest @ 18% on the arrears of pay from the date of its accrual till actual payment.

5. On notice, the management No. 1 & 2 contested the claim application by filing joint written statement on 30.07.2021 wherein preliminary objections are raised on the ground that the workman filed the fresh reference claiming re-fixation of pay and for recovery of ₹ 86,75,439/- as arrears of pay up to 01.02.2021 on account of implementation of recommendations of the Majithia Wage Board vide notification dated 11.11.2011 issued by Central Government by putting the wrong facts as well as by levelling the false allegations and by presenting the fabricated calculation sheet before this Tribunal. The claimant does not fall under the definition of the 'workman' as per Section 2(s) (ii to iv) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*). The claimant has failed to claim himself as workman as per the provisions of the ID Act. As per the nature and status of post, the claimant does not fall within the definition of the 'workman' under the ID Act. The claim statement is liable to be dismissed on account of mis-joinder of the necessary parties as the alleged service rendered by the claimant with the answering management i.e. Chief Manager, HR (who has not been impleaded as party in the present reference) and authorities of Head Office have been impleaded by name. As per the facts, the recommendations of Majithia Wage Board were submitted to the Central Government on 31.12.2010 and same were notified by the Government of India on 11.11.2011. The said recommendations were put under challenge by various media agencies by way of filing the writ petitions before the Hon'ble Supreme Court of India and the said cases were adjudicated upon before the Hon'ble Supreme Court of India in February 2014. The procedure under the scheme of the Act 1955, aggrieved employee seeking to recover any amount under the Act 1955, is required to first move an application before the State Government. As per Rule 36 of the Act 1955, such an application is required to be made in prescribed Form 'C' addressed to the Secretary to the State Government along with the details of the amount claimed, preceded by a 15 days prior notice regarding payment to the concerned newspaper establishment. In this case, the above said requirement of Rule 36 of the Act 1955 has not been complied with. Hence, the proceeding in question is void *ab-initio*. As per Section 17 of the Act 1955, a Civil Suit does not lie after the expiry of 3 years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2018 for the benefit claimed by the claimant for the year 2012. The claimant has annexed the calculation sheet showing the turnover of the management only to get the benefit from the management which is a dispute in question of fact and cannot be decided in summary proceedings before this Tribunal. A dispute in question of fact can only be adjudicated upon by the concerned Civil Court. The basis of computation of the amount claimed has not been indicated by the claimant. The identity of the person who has computed the said amount has not been revealed by the claimant. Hence, the same is frivolous and baseless. The answering managements do have the spirit to honour the judgment delivered by the Hon'ble Supreme Court of India but in the present reference the claimant is not entitled to any benefit in compliance of the judgments delivered by the Hon'ble Supreme of India. No amount is due to the claimant under the provisions of Section 17 of the Act 1955. Further the amount claimed is based on non-existing right. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant has voluntarily chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board. Now nothing is payable to the claimant. The claimant had never raised any question nor made any complaint to the management or to any competent authority regarding the undertaking which he had given within the specified time of 3 weeks. Now after lapse of long time the claimant is raising dispute of non-payment of wages as per the Majithia Wage Board recommendations which is a simply after thought, illegal and baseless. The employees were informed about the Majithia Wage Board recommendations and para 20(j) of the same for payment of the existing pay scale and existing emoluments by affixing copy of the Majithia Wage Board recommendations and notice on the notice board of the company. The applicant-claimant had already received the wages as per para

20(j) of the Majithia Wage Board recommendations and has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board recommendations. The management of DB Corp. Ltd. is a group of businesses including textile, MyFM, digital media, real estate, power and denim. As per the Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted.

6. Further on merits, the contents of para 1 to 5, 7 & 8 are replied being matter of record. It is further stated that the claimant is not entitled for the benefit of compliance of judgment passed by the Hon'ble Supreme Court of India. As per the group of the claimant and class of the Newspaper Establishment the claimant is receiving the wages and other benefits more than the Majithia Wage Board recommendations. The management is having various offices throughout the country and at the time of joining the management the claimant himself gave his consent for his transfer to some other place of work by signing the letter in that regard and the services of the claimant was transferred in a routine manner without any ill-will as per the service rules, but now the claimant is trying to regal out the same by leveling false and frivolous allegations against the management and the same appears to be fiction of the mind of the claimant and the managements reserve their right to initiate appropriate proceedings against the claimant before the competent court of law for leveling false and scandalous allegations against the management. It is specifically denied that the claimant is entitled for revised salary and pay from the management based on the Majithia Wage Board for the period 11.11.2011 to April, 2019. The claimant is not entitled for any financial benefits as well as interest and the claim put forth by the claimant is not a very higher side. The claim is not maintainable in the question-answer form. No cause of action has accrued to the claimant to file the present claim and the same is hopelessly time barred. Rest of the averments of claim statement are denied as wrong. Prayer is made that the reference may be dismissed with exemplary cost.

7. The claimant filed replication wherein the contents of the written statement except admitted facts are denied being without any basis and frivolous and averments of claim statement are reiterated.

8. From the pleadings of the parties, following were framed vide order dated 16.08.2021:—
 1. Whether the arrears of revision of pay to the applicant are to be paid by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
 2. Whether the applicant does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
 3. Whether the claim of the applicant is bad on the ground of mis-joinder and non-joinder of necessary parties ? OPM
 4. Whether the claim of the applicant is time barred ? OPM
 5. Whether the claim of the applicant is not maintainable under the provisions of Section 17 of the Working Journalists & Other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 ? OPM
 6. Relief.

9. In evidence applicant Jai Hind Kumar examined AW1 Avdhesh Gaur, who brought the summoned record and proved the copy of the same Exhibit 'W1/1' to Exhibit 'W1/8'.

Exhibit 'W1/1' is salary breakup for the month of 2009.

Exhibit 'W1/2' is appreciation letter dated 28.05.2014 with revised CTC structure w.e.f. 01.04.2014.

Exhibit 'W1/3' is annual appraisal for the year financial year 2014-15 dated 29.07.2015 along with Annexure 'A'.

Exhibit 'W1/4' is annual appraisal for the year financial year 2017-18 dated 30.08.2018 along with Annexure 'A'.

Exhibit 'W1/5' is annual appraisal for the year financial year 2018-19 dated 30.04.2019 along with Annexure 'A'.

Exhibit 'W1/6' is full & final slip for the month of September, 2021 along with clearance item slip with cheque of ₹ 13,874/-.

Exhibit 'W1/7' is resignation letter dated 09.09.2021 along with acceptance sent on e-mail.

Exhibit 'W1/8' is annual appraisal for the year financial year 2015-16 dated 31.05.2016 along with Annexure 'A'.

10. The claimant also examined AW2 Dhruv Gupta, Chartered Accountant, who tendered his affidavit Exhibit 'AW2/A' along with documents Exhibit 'AW2/1' to Exhibit 'AW2/3'.

Exhibit 'AW2/1' is copy of annual appraisal for the financial year 2016-17 dated 04.09.2017 along with Annexure 'A'.

Exhibit 'AW2/2' is copy of Form 23-ACA, pursuant to Section 220 of the Company's Act, 1956.

Exhibit 'AW2/3' is the calculation sheet of estimated gross salary as per Majithia Wage Board prepared by Dhruv Gupta, Partner for DGR & Associates Chartered Accountants.

11. The claimant examined himself as AW3 and tendered his affidavit Exhibit 'AW3/A' along with copy of documents Exhibit 'AW3/1' and Exhibit 'AW3/2'.

Exhibit 'AW3/1' is Gazette Notification dated 11.11.2011 of Government of India, Ministry of Labour & Employment.

Exhibit 'AW3/2' is calculation sheet of estimated gross salary as per Majithia Wage Board prepared by Chartered Accountant Dhruv Gupta.

During cross-examination the management put documents Exhibit 'M1' to

Exhibit 'M4' to AW3.

Exhibit 'M1' is copy of declaration dated 15.11.2011.

Exhibit 'M2' is copy of resignation dated 09.09.2021.

Exhibit 'M3' is copy of gratuity receipt dated 27.01.2022 issued by Jai Hind.

Exhibit 'M4' is declaration / affidavit dated 27.10.2022 submitted by claimant Jain Hind Kumar.

12. On 10.11.2022, the claimant closed the evidence.

13. On the other hand, the managements examined MW1 Avdhesh Gaur - Assistant Manager HR Admn (CPH2), Office of Dainik Bhaskar, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M9'.

Exhibit 'M1' is identity card of Avdhesh Gaur.

Exhibit 'M2' is authority letter dated Nil issued in favour of Avdhesh Gaur by DB Corp. Ltd.

Exhibit 'M3' is resignation with acceptance dated 09.09.2021.

Exhibit 'M4' is full & final slip for the month of September, 2021.

Exhibit 'M5' is cheque No.835540 dated 27.09.2021 issued in favour of Jai Hind Kumar for the sum of ₹13,874/-.

Exhibit 'M6' is payment advice dated 01.12.2021.

Exhibit 'M7' is cheque No.017191 dated 30.11.2021 issued in favour of Jai Hind Kumar for the sum of ₹ 51,932/-.

Exhibit 'M8' is gratuity receipt dated 27.01.2022.

Exhibit 'M9' is declaration dated 15.11.2011.

14. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide **Exhibit 'MX'**. It is pertinent to mention here that Exhibit 'MW1/A' is numbered twice i.e. affidavit of MW1 Avdhesh Gaur is numbered as Exhibit 'MW1/A' and declaration dated 15.11.2011 put by the management to AW1 in his cross-examination as Exhibit 'MW1/A'. Further Exhibit 'M3' is numbered twice i.e. resignation letter of the claimant is Exhibit 'M3' and receipt of gratuity put to AW3 in his cross-examination is Exhibit 'M3'. In order to avoid any ambiguity, the affidavit of MW1 is renumbered and hereinafter referred as 'MW1/AA' and resignation letter of September, 2021 is hereinafter referred as Exhibit 'M3/1'.

15. On 14.08.2023 Learned Representative for the management No.1 & 2 closed oral evidence. On 06.11.2023 Learned Representative for management No.1 & 2 closed documentary evidence.

16. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below:-

Issue No. 1 :

17. Onus to prove issue No.1 is on the workman.

18. Under this issue, the claimant Jai Hind Kumar examined himself as AW3 and vide his affidavit Exhibit 'AW3/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW3 has supported his oral version with documents Exhibit 'AW3/1' and Exhibit 'AW3/2'.

19. In order to prove the calculation of the arrears claimed, claimant examined AW2 Dhruv Gupta - Chartered Accountant and Partner of the DRG and Associates Firm, who vide his affidavit Exhibit 'AW2/A' has proved that the calculation sheet prepared by him. AW2 has supported his oral version with documents Exhibit 'AW2/1' to Exhibit 'AW2/3' (as detailed).

20. The claimant has examined AW1 Avdhesh Gaur - Assistant Manager, HR Admn. Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh, who proved on record documents Exhibit 'W1/1' to Exhibit 'W1/8'.

21. On the other hand, the management has examined MW1 Avdhesh Gaur - Assistant Manager, HR Admn Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh. (MW1 in his testimony referred the management as respondent and in cross-examination of AWs referred the claimant as workman. In order to avoid any ambiguity the workman is hereinafter referred as claimant and the respondent is hereinafter referred as management.) MW1 vide his affidavit Exhibit 'MW1/A' deposed that he is working as Assistant Manager-HR & Admin (CPH2) with the managements and has been authorised by the management to depose on its behalf in this case before this Court. He is well conversant with the facts of the present case. MW1 further deposed that DB Corp. Ltd. is group of businesses including textile, MY FM, Digital Media, Real Estate, Power, Denim. As per Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. The claimant had concealed the material fact that at the time of leaving the managements after putting the resignation dated 09.09.2021 had accepted all the service benefits and also has received full & final amount from the managements and nothing remaining pending / due and as such the present claimant has no right to contest the present claim petition being not maintainable. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under

notification dated 11.11.2011. The claimant had already received the wages as per Para 20(j) of the Majithia Wage Board recommendations. The claimant has chosen /opted to retain his existing wages and existing emoluments as per Para 20(j) of the Majithia Wage Board at his own voluntarily by signing a declaration dated 15.11.2011 and after signing the declaration, now nothing is payable to the applicant as he has already received wages according to option opted by him as per Para 20(j) and opted to retain his current salary and emoluments at that time. All the employees working have given their signatures on option letter as per their will and submitted it to the management. MW1 further deposed that the claimant is not entitled for the benefit of the compliance of the judgment passed by the Hon'ble Supreme Court of India. MW1 has supported his oral version with documents Exhibit 'M1' to Exhibit 'M9'.

22. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly the claimant was appointed as Unit Attendant in the Dainik Bhaskar Newspaper on 12.06.2009. The salary of the claimant was fixed @ ₹ 6,000/- per month including all perks and allowances. After completion of probation period of six months, the services of the claimant were regularised. The claimant re-designated as Unit Attendant on 01.04.2016. The fact remained undisputed between the parties that during the pendency of the present case the claimant had tendered resignation in September 2021 which was accepted by the management. AW3 / Jai Hind Kumar in his cross-examination stated that he had resigned from the job in the month of September 2021 and copy of resignation letter is Exhibit 'M2'. The claimant's witness AW1 Avdhesh Gaur in his cross-examination admitted as correct that the claimant due to his personal reasons has submitted his resignation which was accepted by the Reporting Manager of the claimant.

23. In the present case, the claimant is demanding arrears of pay as revised according to the recommendations of the Majithia Wage Board w.e.f. 11.11.2011 to 01.02.2021 as per notification dated 11.11.2011/ Exhibit 'AW3/1'. On the other hand, the managements have taken the plea that in view of the option exercised by the claimant under para 20(j) of the notification dated 11.11.2011, the claimant is not entitled to seek benefits of the Majithia Wage Board recommendations.

24. To my opinion, in order to decide whether para 20(j) of notification dated 11.11.2011 is attracted in this case and for better appreciation para 20(j) of the notification is reproduced as below:—

"20(j) The revised pay scales shall become applicable to all employees with effect from 1st July 2010. However, if an employee within three weeks from the date of publication of Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scales and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments."

25. In cross-examination of AW3 Jai Hind Kumar, the management had put declaration dated 15.11.2011 vide Exhibit 'M1' and the management in its evidence also proved the claimant's declaration dated 15.11.2011 vide Exhibit 'M9'. Learned Representative for the claimant argued that declaration Exhibit 'M1' /Exhibit 'M9' is not valid in the eyes of law as it does not bear any passing reference of the designation, employee code, department and place of posting etc. The said declaration is not addressed to any official, countersigned or signed by any witness, without verification, acceptance, place not mentioned and not even attested by any notary. There is no passing reference of the existing wages of the claimant, the said declaration is not voluntarily and has been obtained under duress and under threat of transfer /termination. It is also apparent that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant. It is further argued by Learned Representative for the claimant that the declaration is two-sided legal transaction which means there has to be a second party to the declaration. In the present case, the alleged declaration is only signed by the claimant and there is no reference to whom the same is given, furnished. There is no counter-signature of the authority who had accepted it. On the other hand, it is argued by Learned

Representative for the managements that the declaration dated 15.11.2011 i.e. Exhibit 'M1' / Exhibit 'M9' is a valid document and by way of exercising option in the form of above said declaration, the claimant has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. Therefore, nothing is payable to the claimant as he has already received wages according to the option opted by him under para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. It is further argued by Learned Representative for the managements that the declaration Exhibit 'M1' / Exhibit 'M9' is of dated 15.11.2011 and till date the claimant has not withdrawn the same alleging that it was obtained under pressure. Much stress has been laid upon the fact that the claimant has not withdrawn the said declaration as it was genuine and signed by him with his free consent. Learned Representative for the managements referred case law reported in **1996(3) SCT 597** titled as *V. M. Gadre (Dead) by LRs Versus M.G Diwan* and **2005(8) SCC 49** titled as *State of Uttranchal Versus Jagpal Singh Tyagi*.

26. To my opinion, the argument advanced by the Learned Representative for the claimant that declaration Exhibit 'M1' / Exhibit 'M9' is signed by the claimant under pressure of illegal transfer, suspension is devoid of merits because the claimant / AW3 when put to cross-examination stated that he identify his signatures on declaration dated 15.11.2011 and copy of same is Exhibit 'M1'. AW3 voluntarily stated that his signatures on declaration Exhibit 'M1' were obtained in the year 2014 and date 15.11.2011 is incorrectly written. AW3 in his cross-examination has taken the plea that declaration Exhibit 'M1' is ante-dated as the same is actually got signed in the year 2014 instead of 15.11.2011. To my opinion the aforesaid plea of the claimant would suggest that the claimant admits his signatures on declaration dated 15.11.2011 Exhibit 'M1' / Exhibit 'M9'. The claimant's plea that his signatures on the declaration were obtained subsequently in the year 2014 is not acceptable as no such plea is raised by the claimant in his claim statement. To the contrary it is pleaded in the claim statement that claimant has not signed any declaration / settlement with any of the managements whatsoever in order to waive off the benefits accrued under the Majithia Wage Board recommendations. In this manner, there is a complete denial of signing any declaration by the claimant in his claim statement. Both the pleas raised by the claimant i.e. non-signing of any declaration and obtaining his signature on declaration in the year 2014 are self-contradictory and destructive to each other. Moreover, till date the claimant has not withdrawn his declaration alleging that same is ante-dated. In this regard AW3 in his cross-examination admitted as correct that he has not withdrawn the said declaration. From the aforesaid version of AW3 it is duly proved on record that the declaration dated 15.11.2011 Exhibit 'M1' / Exhibit 'M9' is signed by the claimant with his free will and consent. Moreover, claimant's own witness AW1 Avdhesh Gaur in his cross-examination admitted as correct that during his service with the management the claimant has signed a declaration dated 15.11.2011, copy of same is Exhibit 'MW1/A'. At the time of recording evidence, the original of 'MW1/A' was produced which was seen and returned. MW1 further admitted as correct that Exhibit 'MW1/A' is part of the service guidelines of the claimant. Besides, Avdhesh Gaur when examined himself as MW1 in his cross-examination stated that he has also given similar declaration while joining the service. His signatures were not obtained on any blank paper by the management at the time of joining of his service. MW1 admitted as correct that all the employees / officials have given the declaration under 20(j) and no one has opted for revised wages as per recommendations of Majithia Wage Board. From the cross-examination of MW1 referred above, nothing favourable to the claimant has come on record. Moreover, the claimant has failed to controvert the fact that before obtaining option under para 20(j) of notification dated 11.11.2011 the management had put the notice dated 12.11.2011 / Exhibit 'MX' on the notice board to apprise its employees about their right to exercise the option. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide Exhibit 'MX'. MW1 has denied the suggestion as wrong that notice is prepared afterwards. As per the settled law the suggestion denied by a witness is no evidence unless proved otherwise. The claimant has failed to bring on record any evidence to controvert the genuineness of notice Exhibit 'MX'.

27. The claimant's plea that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant is also devoid of merits. There is no illegality, even if, the managements for the convenience of its employees supplied a proforma to exercise option under para 20(j) of notification dated 11.11.2011. It is for the concerned employee herein claimant to fill-in the proforma by exercising his own discretion. It is not the requirement of para 20(j) of notification dated 11.11.2011 that the declaration must be countersigned by the employer or second party. From the discussion made above, it is duly proved on record that the declaration dated 15.11.2011 / Exhibit 'M1' / Exhibit 'M9' has been signed by the claimant with his free will and consent.

28. From Exhibit 'M3/1' it is duly proved on record that the claimant in September 2021 tendered resignation on the ground that his family circumstances are not good and he is leaving the job and his resignation may be accepted and the same was accepted by the management. The claimant has admittedly received his full & final settlement at the time of resignation from his services. In this regard, AW3 Jai Hind Kumar in his cross-examination admitted as correct that after acceptance of his resignation his full & final dues were prepared by the management. He has received all dues from the management including gratuity. The copy of receipt of gratuity is Exhibit 'M3'. AW3 admitted as correct that he has executed declaration under the signature towards full & final settlement including all arrears and copy of same is Exhibit 'M4'. AW3 admitted as correct that the cheque of full & final payment is en-cashed in his favour. AW3 admitted as correct that he has received the payments without any protest. AW3 admitted as correct that he has executed Exhibit 'M1' to Exhibit 'M4' out of his free will. AW3 further stated that he has not reserved any right to claim benefits of Majithia Wage Board at the time of receiving full & final payment and gratuity from the management. The claimant's own witness AW1 in his cross-examination admitted as correct that the claimant due to his person reasons has submitted his resignation which was accepted by the Reporting Manager of the claimant and thereafter his full & final slip was issued after receiving his no due certificate from all departments of the managements and thereafter the claimant has received all dues from the management. AW1 further stated that after receiving full & final dues from the management the claimant has not raised any claim before the management.

29. From the aforesaid version of AWs it is duly proved on record that the claimant has voluntarily exercised option under para 20(j) of the Majithia Wage Board recommendations by way of declaration dated 15.11.2011 / Exhibit 'M1' / Exhibit 'M9' and voluntarily resigned from his service by way of resignation tendered in September 2021. After the acceptance of resignation the claimant has admittedly received the payments towards full & final settlement Exhibit 'M1' to Exhibit 'M4' (the same documents are proved by MW1 in his examination in chief vide Exhibit 'M4' to Exhibit 'M8') without any protest and without reserving any right to claim benefits of the Majithia Wage Board recommendations. Therefore, the claimant is estopped from seeking the arrears of revised pay as calculated by the Chartered Accountant. The case law referred by Learned Representative for the managements reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G Diwan** and **2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi** are applicable to the present case to an extent.

30. In view of the aforesaid discussion, the claimant is not entitled to receive arrears of revised pay.

31. Accordingly, this issue is decided against the claimant-workman and in favour of management No. 1 & 2.

Issue No. 2:

32. Onus to prove this issue is on the managements.

33. Learned Representative for the management argued that the claimant does not fall within the definition of the 'workman' as defined under Section 2(s) of the ID Act as the nature of the work assigned to the

claimant was supervisory. On the other hand, Learned Representative for the claimant argued that the claimant was not having any managerial or supervisory position. The claimant was not having any power to appoint / dismiss any employee and also had no power to grant leave to any employee. To support his arguments Learned Representative for the claimant referred case law reported in **2006(4) SCT 1** titled ***as Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shaileshkumar Harshadbhai Shah*** in para 11 to 13 held as below:—

"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

12. Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.

*13. The precise question came up for consideration in **Ananda Bazar Patrika (P) Ltd. v. Workmen** [(1970)3 SCC 248] wherein it was held :*

"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity.....

A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

*Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. **Ananda Bazar Patrika (supra)** was followed by the court in large number of cases."*

34. In the present case, it is undeniable fact that the claimant was appointed to the post of Unit Attendant. The management has failed to bring on record any oral or documentary evidence to show that the workman was discharging any kind of supervisory or managerial or administrative functions. In the absence of aforesaid evidence, it cannot be said that the claimant was exercising powers of control or supervision. The judgment **2006(4) SCT 1 (supra)** is applicable to the facts of the present case to an extent. Consequently, the management has failed to prove that the claimant had any authority to initiate departmental proceedings against the subordinates or he had power of control or supervision in regard to recruitment, promotion etc. The management even failed to prove that the claimant had authority to sanction leave to any employee. The claimant, therefore, is a 'workman' as defined under Section 2(s) of the ID Act.

35. Accordingly, this issue is decided against the management No.1 & 2 and in favour of the claimant-workman.

Issue No. 3 &5:

36. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

37. Onus to prove both these issues is on the managements. During course of arguments both these issues are not pressed by the managements.

38. Accordingly, both these issues are decided against management No. 1 & 2 and in favour of the claimant-workman.

Issue No. 4:

39. Onus to prove this issue is on the managements.

40. Learned Representative for the managements contended that the claim statement is time barred. A Civil Suit does not lie after the expiry of three years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2018 for the benefit claimed by the claimant for the year 2012. On the other hand, Learned Representative for the claimant argued that the claimant is seeking his revised pay w.e.f. 01.11.2011, amount of interim relief and arrears of pay with interest @ 18% per annum as per the award given on the recommendations of Majithia Wage Board. On every passing month, the claimant was getting less salary than his due entitlement and on every month a fresh cause of action had arisen in favour of the workman. Whereas the reference to this Tribunal was made by the Assistant Labour Commissioner, U.T. Chandigarh on 04.09.2020. Thus, the claim of the claimant is well within time in as much as the cause of action in the present case is recurring in nature.

41. As proved from the documents on judicial file, the claim raised the application under Section 17(1) of the Act 1955 before the Assistant Labour Commissioner, U.T. Chandigarh on 14.02.2020 and the Worthy Secretary Labour, Chandigarh Administration under Section 17(2) of the Act 1955 referred to present dispute for adjudication to this Tribunal /Court vide reference dated 04.09.2020. Moreover, the contention raised by Learned Representative for the claimant carries force as denial of revision of pay and benefits of arrears of pay is a continuing cause giving rise to a recurring cause of action. Therefore, the bar of limitation does not apply.

42. Accordingly, this issue is decided against management No. 1 & 2 and in favour of the claimant-workman.

Relief :

43. In the view of foregoing finding on the issue No.1 above, this reference is declined and answered against the claimant-workman. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 06.11.2023.

**CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**

Notification

The 2nd February 2024

No. 13/1/9749-HII(2)-2024/1863.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **62/2020** dated **06.11.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

HARNEK SINGH R/O V.P.O GOH, TEHSIL KHANNA, DISTRICT LUDHIANA. (Workmen)

AND

1. M/S DAINIK BHASKAR CORPORATION LIMITED, PLOT NO.280, SARKHEJ GHANDINAGAR HIGHWAY, NEAR YMCA CLUB, MAKARBA, AHMEDABAD, GUJARAT - 380051 THROUGH ITS MANAGING DIRECTOR.
2. M/S DAINIK BHASKAR CORPORATION LIMITED, CHANDIGARH UNIT, PLOT NO.11-12, GROUND FLOOR, DAKSHIN MARG, SECTOR 25, CHANDIGARH - 160036 THROUGH ITS CHIEF EXECUTIVE OFFICER-CUM-AGM HR & ADMN. (Management)

AWARD

1. Vide Endorsement No.13/1/9749-HII(2)-2020/11464 dated 28.08.2020 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the claim application filed by Harnek Singh (*hereinafter referred "claimant"*) to the M/s Dainik Bhaskar Corporation Limited & Another (*hereinafter referred "management"*) under Section 17(1) of the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (*hereinafter in short referred "Act 1955"*) in following words:—

"Whether the arrears of revision of pay to Sh. Harnek Singh, Resident of V.P.O. Goh, Tehsil Khanna, District Ludhiana (Workman/applicant) were to be paid by M/s Dainik Bhaskar Corporation Limited, Plot No.280, Sarkhej Ghandinagar Highway, Near YMCA Club, Makarba, Ahmedabad, Gujarat - 380051 through its Managing Director and M/s Dainik Bhaskar Corporation Limited, Chandigarh Unit, Plot No.11-12, Ground Floor, Dakshin Marg, Sector 25, Chandigarh -160036 through its Chief Executive officer-cum-AGM HR & Admn. (Managements) according to the recommendations of the Majithia Wage Board and also as per the direction of the Hon'ble Supreme Court of India under The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provision Act, 1955 and in compliance of the orders dated 28.04.2015, 12.01.2016, 14.03.2016, 23.08.2016 passed by the Hon'ble Supreme Court of India in CCP No.128/2015 and 129/2015 AND WP (Civil) 246/2011 dated 07.02.2014; if so, to what effect and to what relief he is entitled to, if any ?"

2. Upon notice, the claimant-workman appeared through his Representative Shri Ajay Sharma. Statement of claim was filed on 26.03.2021.
3. Briefly stated the averments of claim statement are that the claimant was working as Utility Technician with Dainik Bhaskar Newspaper having its registered office at Sector 25, Chandigarh. On

account of revision of pay & other allowances accrued on the acceptance of the recommendations of the Majithia Wage Board which were accepted by the Government of India and notified in the Gazette of India on 11.11.2011, a substantial amount is due from Dainik Bhaskar / employer which is denied. On account of fact that a large number of persons are employed in the various newspapers and periodical being published in India and such newspaper or periodical establishment had devised its own way of employing persons to run its working, the Government of India constituted the Press Commission to enquire into the conditions of employment of working journalists. The Press Commission made certain recommendations for improvement and regulation of such service conditions by means of legislation. Accordingly, The Working Journalists (Conditions of Service) and Miscellaneous Provisions Bill was introduced in the Parliament. Consequently, on 20.12.2015 the Act 1955 was enacted to regulate certain conditions of service including minimum period of notice, gratuity, provident fund, settlement of industrial dispute, leave with pay, hours of work and minimum wages of the Working Journalists and the other persons employed in the Newspaper Establishments. From the harmonious joint reading of the provisions of the Act 1955, it is apparent that the Central Government has been competent to fix and revise the wages of the journalists and other employees having been governed by the Act 1955. A procedure has been laid down for fixing and revising rate of wages for which a mandate is casted upon the Central Government to constitute a Wage Board in the manner prescribed in it, which shall examine all the relevant factors like cost of living, the prevalent rate of wages for comparable employment etc. for the ascertainment of the rate of wages and thereafter present its recommendation to the Central Government. On the receipt of such recommendation by the Wage Board, the Central Government is also competent to accept, reject and alter any of the recommendations as may deemed fit. Consequently, the Central Government shall notify the recommendations by way of an Award in the official Gazette of India. In pursuance to an exercise undertaken by Department of Labour and Employment, Union of India under Section 9 of Act 1955, the purpose of enabling the Central Government to fix or revise rate of wages for the working journalists and non-journalists newspaper employees, a Wage Board was constituted under the Chairmanship of Hon'ble Mr. Justice G. R. Majithia (Retd.) and the Wage Board was commonly known as Majithia Wage Board. After examining all the relevant factors regulating the revision of pay and affording opportunity to all the affected parties, the Majithia Wage Board finally submitted its recommendations on 31.12.2010 to the Union of India. On 25.10.2011 the Union of India accepted the same in toto without any modification. The said recommendations were further notified in the official Gazette vide notification dated 11.11.2011. On the publication of the recommendation of the Majithia Wage Board by way of an Award vide Gazette Notification dated 11.11.2011, various newspaper establishments and media houses vide W.P. (C) No.538 of 2011 had made a challenge under Article 32 of the Constitution of India before the Hon'ble Supreme Court of India alleging Act 1955 being ultra-vires as it infringes the fundamental rights guaranteed under Article 14, 19(1)(a) and 19(1)(g) of the Constitution of India. There was also a challenge to the validity of notification dated 11.11.2011 issued by the Union of India. The bunch of aforesaid petitions remained pending for hearing before the Hon'ble Apex Court for 3 years and ultimately while disagreeing with the contentions raised by the newspaper establishments and media houses, the Hon'ble Apex Court dismissed all the petitions vide its judgment dated 07.02.2014 while holding that the recommendations of Majithia Wage Board are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India. Despite the dismissal of the Writ Petitions challenging the validity of Act 1955 and notification dated 11.11.2011, and further directions of the Hon'ble Apex Court for payment of arrears, no compliance was being made by the news agencies. The employees had also taken up their issue before the management No.1 & 2 for payment of revised wages and arrears as per the directions of the Hon'ble Apex Court, however, they were told that a review application have been preferred by them and further course of action would be taken up after its adjudication. Another order dated 13.10.2017 was passed by the Hon'ble Apex Court clarifying the previous

judgment dated 19.06.2017 to the extent that the disputes referred to adjudication under Section 17(2) of the Act 1955, will be disposed of by the concerned Labour Court / Industrial Tribunal as expeditiously as possible preferably within six months of the reference being made.

4. It is further averred that the claimant was appointed as Utility Technician in the Dainik Bhaskar Newspaper at Sirhind on 18.09.2016. The salary of the claimant was fixed @ ₹ 6,250/- per month including all perks and allowances. Initially he was on probation for 6 months and later on his services were regularised. Work & conduct of the claimant has been further appreciated in as much as the service record of the claimant has been exemplary good as no complaint whatsoever has ever been reported to the management from any quarter. The claimant has been earning his annual increments well on time apart from the annual bonus. The services of the claimant were being regulated under the Act 1955. On minute perusal of the notification, it is apparent that employees have been categorised in groups and as such the claimant falls within the ambit of working non-journalists being 'Unit Technician' which is mentioned in Category 4 Factory Staff of the Schedule - III (Grouping of Non-journalists Newspaper Employees - Factory Staff). The request of the claimant and others was kept pending on the ground that the matter was being considered by the management and would take a decision expeditiously. Despite passage of more than 4 years of dismissal of writ petitions by the Hon'ble Apex Court, no payment was made except lame excuses given by the management. In the month of August, 2017 the claimant along with other employees has also been cautioned by the management that in case, they press upon their demand of recovery of dues, then they would be either transferred at other far distant places or their services would be terminated. Despite above, the claimant had been pressing his request of payment of arrears of salary as per the Majithia Wage Board recommendations upon the management No. 2, however, management No. 2 started harassing the claimant by rejecting his leave applications, deploying at odd places, giving work out of his job profile and letting the claimant jobless for days together. Consequently, the claimant was forced to resign from his job w.e.f. 04.12.2017. After putting his papers, the claimant has been on road without any job and has become burden on his family. The claimant was the only bread winner of his family and as such the entire family has been depending upon legitimate arrears of the claimant which is to be paid by the management. The amount which is liable to be recovered from the management based on revised pay on the basis of Majithia Wage Board is legitimate dues of the claimant and as such the claimant is not willing to forego the same in any manner. The claimant has got calculated his estimate revised salary and arrears of pay from a competent Chartered Accountant as per the Majithia Wage Board recommendations w.e.f. 11.11.2011 to 04.12.2017, as such the total amount of ₹ 58,88,926/- including interest @ 18% per annum is due from the management. Despite the demand of detailed arrears of salary calculated as per Majithia Wage Board recommendations w.e.f. 07.01.2014 to 11.03.2019, the management has intentionally and deliberately not been implementing the recommendations of the Majithia Wage Board and has not given any benefit to the claimant in spite of several oral and written requests. The claimant has not signed any declaration in order to waive of the benefits accrued under the Majithia Wage Board recommendations. The management be asked to furnish the details of the salary paid to the employee of the establishment before 07.02.2014 and being paid now and the reasons for non-implementation of the recommendations of the Majithia Wage Board by the management. The present claim is without prejudice to the rights of the claimant to the Contempt of Court proceedings against the management for its deliberate, willful and intentional violation of the order dated 07.02.2014 of Hon'ble Supreme Court. The cause of action of the claimant is continuous. As such, the present claim is being filed within period of limitation. The claimant has not filed any other claim or petition before any Court of Law except the present one. The claim application is accompanied with calculation sheet Annexure 'A3'. Prayer is made that Award may be passed directing the managements to implement the Majithia Wage Board recommendations and re-fix the pay of the claimant accordingly with further prayer directing the managements to release arrears of pay to the tune of ₹ 58,88,926/- as per Annexure 'A3' with costs and to pay interest @ 18% on the arrears of pay from the date of its accrual till actual payment.

5. On notice, the management No. 1 & 2 contested the claim application by filing joint written statement on 30.07.2021 wherein preliminary objections are raised on the ground that the workman filed the fresh

reference claiming re-fixation of pay and for recovery of ₹ 58,88,926/- as arrears of pay up to 04.12.2017 on account of implementation of recommendations of the Majithia Wage Board vide notification dated 11.11.2011 issued by Central Government by putting the wrong facts as well as by levelling the false allegations and by presenting the fabricated calculation sheet before this Tribunal. The claimant does not fall under the definition of the 'workman' as per Section 2(s) (ii to iv) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*). The claimant has failed to claim himself as workman as per the provisions of the ID Act. As per the nature and status of post, the claimant does not fall within the definition of the 'workman' under the ID Act. The claim statement is liable to be dismissed on account of mis-joinder of the necessary parties as the alleged service rendered by the claimant with the answering management i.e. Chief Manager, HR (who has not been impleaded as party in the present reference) and authorities of Head Office have been impleaded by name. As per the facts, the recommendations of Majithia Wage Board were submitted to the Central Government on 31.12.2010 and same were notified by the Government of India on 11.11.2011. The said recommendations were put under challenge by various media agencies by way of filing the writ petitions before the Hon'ble Supreme Court of India and the said cases were adjudicated upon before the Hon'ble Supreme Court of India in February 2014. It is further stated that the submission of resignation is admitted by the claimant himself. It is well settled proposition of law that admission is the best evidence. Besides, the claimant had concealed the material fact that at the time of leaving the managements after putting the resignation, had accepted all the service benefits and received full & final amount from the managements and nothing remained pending / due and as such the present claimant has no right to contest the present reference being not maintainable. The procedure under the scheme of the Act 1955, aggrieved employee seeking to recover any amount under the Act 1955, is required to first move an application before the State Government. As per Rule 36 of the Act 1955, such an application is required to be made in prescribed Form 'C' addressed to the Secretary to the State Government along with the details of the amount claimed, preceded by a 15 days prior notice regarding payment to the concerned newspaper establishment. In this case, the above said requirement of Rule 36 of the Act 1955 has not been complied with. Hence, the proceeding in question is void ab-initio. As per Section 17 of the Act 1955, a Civil Suit does not lie after the expiry of 3 years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2018 for the benefit claimed by the claimant for the year 2012. The claimant has annexed the calculation sheet showing the turn-over of the management only to get the benefit from the management which is a dispute in question of fact and cannot be decided in summary proceedings before this Tribunal. A dispute in question of fact can only be adjudicated upon by the concerned Civil Court. The basis of computation of the amount claimed has not been indicated by the claimant. The identity of the person who has computed the said amount has not been revealed by the claimant. Hence, the same is frivolous and baseless. The answering managements do have the spirit to honour the judgment delivered by the Hon'ble Supreme Court of India but in the present reference the claimant is not entitled to any benefit in compliance of the judgments delivered by the Hon'ble Supreme of India. No amount is due to the claimant under the provisions of Section 17 of the Act 1955. Further the amount claimed is based on non-existing right. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant has voluntarily chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board. Now nothing is payable to the claimant. The claimant had never raised any question nor made any complaint to the management or to any competent authority regarding the undertaking which he had given within the specified time of 3 weeks. Now after lapse of long time the claimant is raising dispute of non-payment of wages as per the Majithia Wage Board recommendations which is a simply after thought, illegal and baseless. The employees were informed about the Majithia Wage Board recommendations and para 20(j) of the same for payment of the existing pay scale and existing emoluments by affixing copy of the Majithia Wage Board recommendations and notice on the notice board of the company. The applicant-claimant had already received the wages as per para 20(j) of the Majithia Wage Board recommendations and has chosen / opted to retain his existing wages and

existing emoluments as per para 20(j) of the Majithia Wage Board recommendations. The management of DB Corp. Ltd. is a group of businesses including textile, MyFM, digital media, real estate, power and denim. As per the Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted.

6. Further on merits, the contents of para 1 to 5, 7 & 8 are replied being matter of record. It is further stated that the claimant is not entitled for the benefit of compliance of judgment passed by the Hon'ble Supreme Court of India. As per the group of the claimant and class of the Newspaper Establishment the claimant is receiving the wages and other benefits more than the Majithia Wage Board recommendations. The management is having various offices throughout the country and at the time of joining the management the claimant himself gave his consent for his transfer to some other place of work by signing the letter in that regard and the services of the claimant was transferred in a routine manner without any ill-will as per the service rules, but now the claimant is trying to regal out the same by leveling false and frivolous allegations against the management and the same appears to be fiction of the mind of the claimant and the managements reserve their right to initiate appropriate proceedings against the claimant before the competent court of law for leveling false and scandalous allegations against the management. It is specifically denied that the claimant is entitled for revised salary and pay from the management based on the Majithia Wage Board for the period 07.01.2014 to 11.03.2019. The claimant is not entitled for any financial benefits as well as interest and the claim put forth by the claimant is not a very higher side. The claim is not maintainable in the question-answer form. No cause of action has accrued to the claimant to file the present claim and the same is hopelessly time barred. Rest of the averments of claim statement are denied as wrong. Prayer is made that the reference may be dismissed with exemplary cost.

7. The claimant filed replication wherein the contents of the written statement except admitted facts are denied being without any basis and frivolous and averments of claim statement are reiterated.

8. From the pleadings of the parties, following were framed vide order dated 16.08.2021:—

1. Whether the arrears of revision of pay to the applicant are to be paid by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the applicant does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
3. Whether the claim of the applicant is bad on the ground of mis-joinder and non-joinder of necessary parties ? OPM
4. Whether the claim of the applicant is time barred ? OPM
5. Whether the claim of the applicant is not maintainable under the provisions of Section 17 of the Working Journalists & Other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 ? OPM
6. Relief.

9. In evidence claimant Harnek Singh examined AW1 Dhruv Gupta, Chartered Accountant, who tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'AW1/1' to Exhibit 'AW1/3'.

Exhibit 'AW1/1' is copy of income tax worksheet for the month of April, 2014.

Exhibit 'AW1/2' is copy of Form 23-ACA, pursuant to Section 220 of the Company's Act, 1956.

Exhibit 'AW1/3' is the calculation sheet of estimated gross salary as per Majithia Wage Board prepared by Dhruv Gupta, Partner for DGR & Associates Chartered Accountants.

10. The claimant examined himself as AW2 and tendered his affidavit Exhibit 'AW2/A' along with copy of documents Exhibit 'AW2/1' and Exhibit 'AW2/2'.

Exhibit 'AW2/1' is Gazette Notification dated 11.11.2011 of Government of India, Ministry of Labour & Employment.

Exhibit 'AW2/2' is calculation sheet of estimated gross salary as per Majithia Wage Board prepared by Chartered Accountant Dhruv Gupta.

It is pertinent to mention here that during cross-examination the management put documents Exhibit 'M1' to 'M3' to AW2.

Exhibit 'M1' is copy declaration dated 15.11.2011 of the claimant.

Exhibit 'M2' is copy of full & final settlement advice dated 16.05.2018 of the claimant.

Exhibit 'M3' is copy of cheque No.003184 dated 20.02.2018 for ₹ 7,073/- of IDBI Bank issued by claimant Harnek Singh in favour of Dainik Bhaskar

11. The claimant also examined AW3 Avdhesh Gaur, who brought the summoned record and proved the copy of the same Exhibit 'AW3/1' to Exhibit 'AW3/6'.

Exhibit 'AW3/1' is appraisal letter dated 28.05.2014 with revised CTC structure w.e.f. 01.04.2014.

Exhibit 'AW3/2' is annual appraisal for the financial year 2014-15 dated 29.07.2015 with Annexure 'A'.

Exhibit 'AW3/3' is triall appraisal for the financial year 2015-16 dated 31.05.2016 with Annexure 'A'.

Exhibit 'AW3/4' is full & final slip for the month of January 2018.

Exhibit 'AW3/5' is resignation email dated 04.12.2017 along with acceptance sent on e-mail dated 04.12.2017.

Exhibit 'AW3/6' is demand draft of Gratuity amount to ₹ 27,655/- dated 10.05.2018.

12. On 05.12.2022 the Learned Representative for the claimant closed the evidence of the claimant-workman.

13. On the other hand, the managements examined MW1 Avdhesh Gaur - Assistant Manager HR Admn (CPH2), Office of Dainik Bhaskar, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M8'.

Exhibit 'M1' is identity card of Avdhesh Gaur issued by Dainik Bhaskar.

Exhibit 'M2' is authority letter issued in favour of Avdhesh Gaur by Shri Sanjay Gupta - Authorised Signatory DB Corp. Ltd.

Exhibit 'M3' is resignation letter dated 04.12.2017 of Harnek Singh with acceptance.

Exhibit 'M4' is full & final slip for the month of January, 2018.

Exhibit 'M5' is cheque No.003184 dated 20.02.2018 for a sum of ₹ 7,073/- drawn on IDBI Bank in favour of Dainik Bhaskar issued by Harnek Singh.

Exhibit 'M6' is gratuity payment advice dated 18.05.2018.

Exhibit 'M7' is demand draft No.012908 dated 18.05.2018 for a sum of ₹ 27,655/- drawn in favour of Harnek Singh.

Exhibit 'M8' is declaration dated 15.11.2011 of Harnek Singh.

14. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide **Exhibit 'MX'**. It is pertinent to mention here that Exhibit 'MW1/A' is numbered twice i.e. affidavit of MW1 Avdhesh Gaur is numbered as Exhibit 'MW1/A' and declaration put to AW3 in his cross-examination vide Exhibit 'MW1/A'. In order to avoid any ambiguity, the affidavit of MW1 is hereafter referred as 'MW1/AA'. Further Exhibit 'M1', Exhibit 'M2' and Exhibit 'M3' are numbered twice i.e. in cross-examination of AW2 declaration dated 15.11.2011 of the claimant Harnek Singh, the receipt of full & final settlement and payment of gratuity and cheque No. 003184 dated 20.02.2018 for a sum of ₹ 7,073/- issued by Harnek Singh in favour of Dainik Bhaskar put vide Exhibit 'M1', Exhibit 'M2' and Exhibit 'M3' respectively whereas MW1 in his examination-in-chief tendered his identity card vide Exhibit 'M1'; authority letter in his favour vide Exhibit 'M2' and resignation letter dated 04.12.2017 of Harnek Singh along with acceptance vide Exhibit 'M3'. In order to avoid any ambiguity identity card of MW1 is renumbered and hereinafter referred as Exhibit 'M1/1'; the authority letter in favour of MW1 is renumbered and hereinafter referred as Exhibit 'M2/1' and resignation letter dated 14.12.2017 of Harnek Singh with acceptance is renumbered and hereinafter referred as Exhibit 'M3/1'.

15. On 14.08.2023 Learned Representative for the management No.1 & 2 closed oral evidence. On 06.11.2023 Learned Representative for management No.1 & 2 closed documentary evidence.

16. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below:-

Issue No. 1:

17. Onus to prove issue No.1 is on the workman.

18. Under this issue, the claimant Harnek Singh examined himself as AW2 and vide his affidavit Exhibit 'AW2/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW2 has supported his oral version with documents Exhibit 'AW2/1' and Exhibit 'AW2/2'.

19. In order to prove the calculation of the arrears claimed, claimant examined AW1 Dhruv Gupta - Chartered Accountant and Partner of the DRG and Associates Firm, who vide his affidavit Exhibit 'AW1/A' has proved that the calculation sheet prepared by him. AW1 has supported his oral version with documents Exhibit 'AW1/1' to Exhibit 'AW1/3' (as detailed).

20. The claimant has examined AW3 Avdhesh Gaur - Assistant Manager, HR Admn. Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh, who proved on record documents Exhibit 'AW3/1' to Exhibit 'AW3/6'.

21. On the other hand, the management has examined MW1 Avdhesh Gaur - Assistant Manager, HR Admn Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh. (MW1 in his testimony referred the management as respondent and in cross-examination of AWs referred the claimant as workman. In order to avoid any ambiguity the workman is hereinafter referred as claimant and the respondent is hereinafter referred as management.) MW1 vide his affidavit Exhibit 'MW1/A' deposed that he is working as Assistant Manager - HR & Admin (CPH2) with the managements and has been authorised by the management to depose on its behalf in this case before this Court. He is well conversant with the facts of the present case. MW1 further deposed that DB Corp. Ltd. is group of businesses including textile, MY FM, Digital Media, Real Estate, Power, Denim. As per Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. The claimant had concealed the material fact that at the time of leaving the managements after putting the resignation dated 12.04.2017 had accepted all the service benefits and also has received full & final amount from the managements and nothing remaining pending / due and as such the present claimant has no right to contest the present claim petition being not maintainable. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per Para 20(j) of

the Majithia Wage Board recommendations. The claimant has chosen/opted to retain his existing wages and existing emoluments as per Para 20(j) of the Majithia Wage Board at his own voluntarily by signing a declaration dated 15.11.2011 and after signing the declaration, now nothing is payable to the applicant as he has already received wages according to option opted by him as per Para 20(j) and opted to retain his current salary and emoluments at that time. All the employees working have given their signatures on option letter as per their will and submitted it to the management. MW1 further deposed that the claimant is not entitled for the benefit of the compliance of the judgment passed by the Hon'ble Supreme Court of India. MW1 has supported his oral version with documents Exhibit 'M1' to Exhibit 'M8'.

22. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly the claimant was appointed as Utility Technician in the Dainik Bhaskar Newspaper on 18.09.2010. The salary of the claimant was fixed @ ₹ 6,250/- per month including all perks and allowances. After completion of probation period of six months, the services of the claimant were regularised. The fact remained undisputed between the parties that the claimant had tendered resignation on 04.12.2017 which was accepted by the management.

23. In the present case, the claimant is demanding arrears of pay as revised according to the recommendations of the Majithia Wage Board w.e.f. 11.11.2011 to 04.12.2017 as per notification dated 11.11.2011 / Exhibit 'AW2/1'. On the other hand, the managements have taken the plea that in view of the option exercised by the claimant under para 20(j) of the notification dated 11.11.2011, the claimant is not entitled to seek benefits of the Majithia Wage Board recommendations.

24. To my opinion, in order to decide whether para 20(j) of notification dated 11.11.2011 is attracted in this case and for better appreciation para 20(j) of the said notification is reproduced as below:—

"20(j) The revised pay scales shall become applicable to all employees with effect from 1st July 2010. However, if an employee within three weeks from the date of publication of Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scales and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments."

25. Declaration dated 15.11.2011 is put by the management to AW2 in his cross-examination as Exhibit 'M1' and put by the management to AW3 in his cross-examination vide Exhibit 'MW1/A' and the management proved declaration dated 15.11.2011 vide Exhibit 'M8'. Learned Representative for the claimant argued that declaration Exhibit 'M1' / Exhibit 'MW1/A' / Exhibit 'M8' is not valid in the eyes of law as it does not bear any passing reference of the designation, employee code, department and place of posting etc. The said declaration is not addressed to any official, countersigned or signed by any witness, without verification, acceptance, place not mentioned and not even attested by any notary. There is no passing reference of the existing wages of the claimant, the said declaration is not voluntarily and has been obtained under duress and under threat of transfer / termination. It is also apparent that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant. It is further argued by Learned Representative for the claimant that the declaration is two sided legal transaction which means there has to be a second party to the declaration. In the present case, the alleged declaration is only signed by the claimant and there is no reference to whom the same is given, furnished. There is no counter-signature of the authority who had accepted it. On the other hand, it is argued by Learned Representative for the management that the declaration dated 15.11.2011 i.e. Exhibit 'M1' / Exhibit 'MW1/A' / Exhibit 'M8' is a valid document and by way of exercising option in the form of above said declaration, the claimant has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. Therefore, nothing is payable to the claimant as he has already received wages according to the option opted by him under para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. It is further argued by Learned Representative for the management that the declaration Exhibit

'M1' /Exhibit 'MW1/A' / Exhibit 'M8' is of dated 15.11.2011 and till date the claimant has not withdrawn the same alleging that it was obtained under pressure. Much stress has been laid upon the fact that the claimant has not withdrawn the said declaration as it was genuine and signed by him with his free consent. Learned Representative for the managements referred case law reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G Diwan** and **2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi**.

26. To my opinion, the argument advanced by the Learned Representative for the claimant that declaration Exhibit 'M1' / Exhibit 'MW1/A' / Exhibit 'M8' is signed by the claimant under pressure of illegal transfer, suspension is devoid of merits because the claimant / AW2 when put to cross-examination stated that he identifies his signatures on declaration dated 15.11.2011 and copy of declaration is Exhibit 'M1'. AW2 voluntarily stated that the declaration was signed in year 2015. AW2 in his cross-examination has taken the plea that declaration Exhibit 'M1' is ante-dated as the same is actually got signed in the year 2015 instead of 15.11.2011. To my opinion the aforesaid plea of the claimant would suggest that the claimant admits his signatures on declaration dated 15.11.2011 Exhibit 'M1' / Exhibit 'MW1/A' / Exhibit 'M8'. The claimant's plea that his signatures on the declaration were obtained subsequently in the year 2015 is not acceptable as no such plea is raised by the claimant in his claim statement. To the contrary it is pleaded in the claim statement that claimant has not signed any declaration / settlement with any of the managements whatsoever in order to waive off the benefits accrued under the Majithia Wage Board recommendations. In this manner, there is a complete denial of signing any declaration by the claimant in his claim statement. Both the pleas raised by the claimant i.e. non-signing of any declaration and obtaining his signature on declaration in the year 2015 are self-contradictory and destructive to each other. Moreover, till date the claimant has not withdrawn his declaration alleging that same is ante-dated. In this regard AW2 in his cross-examination stated that till date he did not withdraw the declaration Exhibit 'M1'. From the version of AW2 referred above it is duly proved on record that the declaration dated 15.11.2011 / Exhibit 'M1' / Exhibit 'MW1/A' / Exhibit 'M8' is signed by the claimant with his free will and consent. Moreover, the claimant has failed to controvert the fact that before obtaining option under para 20(j) of notification dated 11.11.2011 the management had put the notice dated 12.11.2011 / Exhibit 'MX' on the notice board to apprise its employees about their right to exercise the option. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide Exhibit 'MX'. MW1 has denied the suggestion as wrong that notice is prepared afterwards. As per the settled law the suggestion denied by a witness is no evidence unless proved otherwise. The claimant has failed to bring on record any evidence to controvert the genuineness of notice Exhibit 'MX'.

27. The claimant's plea that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant is also devoid of merits. There is no illegality, even if, the managements for the convenience of its employees supplied a proforma to exercise option under para 20(j) of notification dated 11.11.2011. It is for the concerned employee herein claimant to fill-in the proforma by exercising his own discretion. It is not the requirement of para 20(j) of notification dated 11.11.2011 that the declaration must be countersigned by the employer or second party. Moreover, claimant's own witness AW3 Avdhesh Gaur in his cross-examination admitted as correct that during his service with the management the claimant has signed a declaration dated 15.11.2011, copy of same is Exhibit 'MW1/A'. At the time of recording evidence, the original of MW1/A' was produced which was seen and returned. MW1 further admitted as correct that Exhibit 'MW1/A' is part of the service guidelines of the claimant. Besides, Avdhesh Gaur when examined himself as MW1 in his cross-examination stated that he has also given similar declaration while joining the service. His signatures were not obtained on any blank paper by the management at the time of joining of his service. MW1 admitted as correct that all the employees / officials have given the declaration under 20(j) and no one has opted for revised wages as per recommendations of Majithia Wage Board. From the cross-examination of MW1 referred above, nothing favourable to the claimant has come on record.

28. From Exhibit 'M3/1' it is duly proved on record that the claimant on 04.12.2017 tendered resignation on the ground of family problems which was accepted by the management. For better appreciation the relevant contents of resignation letter dated 04.12.2017 are reproduced as below:—

"This is to be inform you that I am not continue my service because some of my family problems. You are requested to kindly accept my resignation and releave me from the service till 04-12-17."

29. The contents of the resignation letter referred above would prove that the claimant has tendered resignation due to his family problems and not on account of any threat or pressure of the management. The claimant has admittedly received his full & final payment after acceptance of resignation. In this regard, AW2 Harnek Singh in his cross-examination admitted as correct that he has received payment of ₹ 27,655/- towards gratuity and copy of payment advice is Exhibit 'M2'. AW2 further admitted as correct that there was an outstanding amount of ₹ 7073/- standing against his name which was adjusted towards his full & final settlement amount and he was paid a sum of ₹ 7073/-towards settlement of all his liability towards the management and copy of same is Exhibit 'M3'. AW2 admitted as correct that he has received all the amounts towards full & final settlement and gratuity vide Exhibit 'M2' and Exhibit 'M3' without any protest. During his tenure of service, he did not receive any salary or benefit under protest and he did not reserve his rights to claim benefits of Majithia Wage Board recommendations. From version of AW2 referred above it is duly proved on record that the claimant has voluntarily exercised option under para 20(j) of the Majithia Wage Board recommendations by way of declaration dated 15.11.2011 / Exhibit 'M1' / Exhibit 'MW1/A' / Exhibit 'M8' and voluntarily resigned from his service by way of resignation tendered on 04.12.2017. Thereafter the claimant issued full & final slip for the month of January 2018 vide Exhibit 'AW3/4' / Exhibit 'M4' and received the outstanding payments towards full & final settlement of accounts vide Exhibit 'M5' to Exhibit 'M7' without any protest and without reserving any right to claim benefits of the Majithia Wage Board recommendations. Therefore, the claimant is estopped from seeking the arrears of revised pay as calculated by the Chartered Accountant. The case law referred by Learned Representative for the managements reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G. Diwan and 2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi** are applicable to the present case to an extent.

30. In view of the aforesaid discussion, the claimant is not entitled to receive arrears of revised pay.

31. Accordingly, this issue is decided against the claimant-workman and in favour of management No.1 & 2.

Issue No .2:

32. Onus to prove this issue is on the managements.

33. Learned Representative for the management argued that the claimant does not fall within the definition of the 'workman' as defined under Section 2(s) of the ID Act as the nature of the work assigned to the claimant was supervisory. On the other hand, Learned Representative for the claimant argued that the claimant was not having any managerial or supervisory position. The claimant was not having any power to appoint / dismiss any employee and also had no power to grant leave to any employee. To support his arguments Learned Representative for the claimant referred case law reported in **2006(4) SCT 1** titled as **Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shaileshkumar Harshadbhai Shah** in para 11 to 13 held as below:-

"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

12. *Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.*

13. *The precise question came up for consideration in **Ananda Bazar Patrika (P) Ltd. v. Workmen [(1970)3 SCC 248]** wherein it was held :*

"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity.....

A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

*Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. **Ananda Bazar Patrika (supra)** was followed by the court in large number of cases."*

34. In the present case, it is undeniable fact that the claimant was appointed to the post of Utility Technician. The management has failed to bring on record any oral or documentary evidence to show that the workman was discharging any kind of supervisory or managerial or administrative functions. In the absence of aforesaid evidence, it cannot be said that the claimant was exercising powers of control or supervision. The judgment **2006(4) SCT 1 (supra)** is applicable to the facts of the present case to an extent. Consequently, the management has failed to prove that the claimant had any authority to initiate departmental proceedings against the subordinates or he had power of control or supervision in regard to recruitment, promotion etc. The management even failed to prove that the claimant had authority to sanction leave to any employee. The claimant, therefore, is a 'workman' as defined under Section 2(s) of the ID Act.

35. Accordingly, this issue is decided against management No.1 & 2 and in favour of the claimant-workman.

Issue No. 3 &5:

36. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

37. Onus to prove both these issues is on the managements. During course of arguments both these issues are not pressed by the managements.

38. Accordingly, both these issues are decided against management No. 1 & 2 and in favour of the claimant-workman.

Issue No. 4:

39. Onus to prove this issue is on the managements.

40. Learned Representative for the managements contended that the claim statement is time barred. A Civil Suit does not lie after the expiry of three years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2018 for the benefit claimed by the claimant for the year 2012. On the other hand, Learned Representative for the claimant argued that the claimant is seeking his revised pay w.e.f. 01.11.2011, amount of interim relief and arrears of pay with interest @ 18% per annum as per the award given on the recommendations of Majithia Wage Board. On every passing month, the claimant was getting less salary than his due entitlement and on every month a fresh cause of action had arisen in favour of the workman. Whereas the reference to this Tribunal was made by the Assistant Labour Commissioner, U.T. Chandigarh on 28.08.2020. Thus, the claim of the claimant is well within time in as much as the cause of action in the present case is recurring in nature.

41. As proved from the documents on judicial file, the claim raised the application under Section 17(1) of the Act 1955 before the Assistant Labour Commissioner, U.T. Chandigarh on 09.12.2019 and the Worthy Secretary Labour, Chandigarh Administration under Section 17(2) of the Act 1955 referred to present dispute for adjudication to this Tribunal / Court vide reference dated 28.08.2020. Moreover, the contention raised by Learned Representative for the claimant carries force as denial of revision of pay and benefits of arrears of pay is a continuing cause giving rise to a recurring cause of action. Therefore, the bar of limitation does not apply.

42. Accordingly, this issue is decided against management No.1 & 2 and in favour of the claimant-workman.

Relief :

43. In the view of foregoing finding on the issue No.1 above, this reference is declined and answered against the claimant-workman. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 06.11.2023.

**CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**

Notification

The 2nd February, 2024

No. 13/1/9751-HII(2)-2024/1865.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **63/2020** dated **06.11.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

PARVINDER SINGH R/O VILLAGE TARKHAN MAJRA, P.O. MALKOMAJRA, FATEHGARH SAHIB - 140406 (Workmen)

AND

1. M/S DAINIK BHASKAR CORPORATION LIMITED, PLOT NO. 280, SARKHEJ GHANDINAGAR HIGHWAY, NEAR YMCA CLUB, MAKARBA, AHMEDABAD, GUJARAT - 380051 THROUGH ITS MANAGING DIRECTOR.
2. M/S DAINIK BHASKAR CORPORATION LIMITED, CHANDIGARH UNIT, PLOT NO.11-12, GROUND FLOOR, DAKSHIN MARG, SECTOR 25, CHANDIGARH - 160036 THROUGH ITS CHIEF EXECUTIVE. (Management)

AWARD

1. Vide Endorsement No.13/1/9751-HII(2)-2020/11460 Dated 28.08.2020 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court /Tribunal on the claim application filed by Parvinder Singh (*hereinafter referred "claimant"*) to the M/s Dainik Bhaskar Corporation Limited & Another (*hereinafter referred "management"*) under Section 17(1) of the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (*hereinafter in short referred "Act 1955"*) in following words:—

"Whether the arrears of revision of pay to Sh. Parvinder Singh, Resident of Village Tarkhan Majra, P.O. Malkomajra, District Fatehgarh Sahib-140406 (Workman/applicant) were to be paid by M/s Dainik Bhaskar Corporation Limited, Plot No.280, Sarkhej Ghandinagar Highway, Near YMCA Club, Makarba, Ahmedabad, Gujarat-380051 through its Managing Director and M/s Dainik Bhaskar Corporation Limited, Chandigarh Unit, Plot No.11-12, Ground Floor, Dakshin Marg, Sector 25, Chandigarh-160036 through its Chief Executive (Managements) according to the recommendations of the Majithia Wage Board and also as per the direction of the Hon'ble Supreme Court of India under The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provision Act, 1955 and in compliance of the orders dated 28.04.2015, 12.01.2016, 14.03.2016, 23.08.2016 passed by the Hon'ble Supreme Court of India in CCP No.128/2015 and 129/2015 AND WP (Civil) 246/2011 dated 07.02.2014; if so, to what effect and to what relief he is entitled to, if any ?"

2. Upon notice, the claimant-workman appeared through his Representative Shri Ajay Sharma. Statement of claim was filed on 26.03.2021.
3. Briefly stated the averments of claim statement are that the claimant is working as Unit Attendant with Dainik Bhaskar Newspaper having its registered office at Sector 25, Chandigarh. On account of revision of pay & other allowances accrued on the acceptance of the recommendations of the Majithia Wage Board which were accepted by the Government of India and notified in the Gazette of India on 11.11.2011, a substantial amount is due from Dainik Bhaskar / employer which is denied. On account of fact that a large number of

persons are employed in the various newspapers and periodical being published in India and such newspaper or periodical establishment had devised its own way of employing persons to run its working, the Government of India constituted the Press Commission to enquire into the conditions of employment of working journalists. The Press Commission made certain recommendations for improvement and regulation of such service conditions by means of legislation. Accordingly, The Working Journalists (Conditions of Service) and Miscellaneous Provisions Bill was introduced in the Parliament. Consequently, on 20.12.2015 the Act 1955 was enacted to regulate certain conditions of service including minimum period of notice, gratuity, provident fund, settlement of industrial dispute, leave with pay, hours of work and minimum wages of the Working Journalists and the other persons employed in the Newspaper Establishments. From the harmonious joint reading of the provisions of the Act 1955, it is apparent that the Central Government has been competent to fix and revise the wages of the journalists and other employees having been governed by the Act 1955. A procedure has been laid down for fixing and revising rate of wages for which a mandate is casted upon the Central Government to constitute a Wage Board in the manner prescribed in it, which shall examine all the relevant factors like cost of living, the prevalent rate of wages for comparable employment etc. for the ascertainment of the rate of wages and thereafter present its recommendation to the Central Government. On the receipt of such recommendation by the Wage Board, the Central Government is also competent to accept, reject and alter any of the recommendations as may deemed fit. Consequently, the Central Government shall notify the recommendations by way of an Award in the official Gazette of India. In pursuance to an exercise undertaken by Department of Labour and Employment, Union of India under Section 9 of Act 1955, the purpose of enabling the Central Government to fix or revise rate of wages for the working journalists and non-journalists newspaper employees, a Wage Board was constituted under the Chairmanship of Hon'ble Mr. Justice G. R. Majithia (Retd.) and the Wage Board was commonly known as Majithia Wage Board. After examining all the relevant factors regulating the revision of pay and affording opportunity to all the affected parties, the Majithia Wage Board finally submitted its recommendations on 31.12.2010 to the Union of India. On 25.10.2011 the Union of India accepted the same in toto without any modification. The said recommendations were further notified in the official Gazette vide notification dated 11.11.2011. On the publication of the recommendation of the Majithia Wage Board by way of an Award vide Gazette Notification dated 11.11.2011, various newspaper establishments and media houses vide W.P. (C) No.538 of 2011 had made a challenge under Article 32 of the Constitution of India before the Hon'ble Supreme Court of India alleging Act 1955 being *ultra-vires* as it infringes the fundamental rights guaranteed under Article 14, 19(1)(a) and 19(1)(g) of the Constitution of India. There was also a challenge to the validity of notification dated 11.11.2011 issued by the Union of India. The bunch of aforesaid petitions remained pending for hearing before the Hon'ble Apex Court for 3 years and ultimately while disagreeing with the contentions raised by the newspaper establishments and media houses, the Hon'ble Apex Court dismissed all the petitions vide its judgment dated 07.02.2014 while holding that the recommendations of Majithia Wage Board are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India. Despite the dismissal of the Writ Petitions challenging the validity of Act 1955 and notification dated 11.11.2011, and further directions of the Hon'ble Apex Court for payment of arrears, no compliance was being made by the news agencies. The employees had also taken up their issue before the management No.1 & 2 for payment of revised wages and arrears as per the directions of the Hon'ble Apex Court, however, they were told that a review application have been preferred by them and further course of action would be taken up after its adjudication. Another order dated 13.10.2017 was passed by the Hon'ble Apex Court clarifying the previous judgment dated 19.06.2017 to the extent that the disputes referred to adjudication under Section 17(2) of the Act 1955, will be disposed of by the concerned Labour Court / Industrial Tribunal as expeditiously as possible preferably within six months of the reference being made.

4. It is further averred that the claimant was appointed as Unit Attendant in the Production Division of Dainik Bhaskar Newspaper on 27.08.2008. The salary of the claimant was fixed @ ₹ 6,000/- per month including all perks and allowances. Initially he was on probation for 6 months and later on his services were regularised. Management No.2 had further re-designated the claimant as Unit Attendant on 01.04.2016. The services of the claimant were being regulated under the Act 1955. As per the notification, the employees

have been categorised in groups and as such the claimant falls within the ambit of Group 6 Factory Staff from 27.08.2008 and Group 5 Factory Staff from 01.09.2018. The request of the claimant and others was kept pending on the ground that the matter was being considered by the management and would take a decision expeditiously. Despite passage of more than 4 years of dismissal of Writ Petitions by the Hon'ble Apex Court, no payment was made except lame excuses given by the management. In the month of February 2019, the claimant along with other employees has also been cautioned by the management that in case, they press upon their demand of recovery of dues, then they would be either transferred at other far distant places or their services would be terminated. Despite above, the claimant had been pressing his request of payment of arrears of salary as per the Majithia Wage Board recommendations upon the management No.2, however, management No.2 started harassing the claimant by rejecting his leave applications, deploying at odd places, giving work out of his job profile and letting the claimant jobless for days together. The claimant has been continuously discharging his duties till date. The claimant is the only bread winner of his family and as such the entire family has been depending upon legitimate salary and arrears of the claimant which is to be paid by the managements. The amount which is liable to be recovered from the management based on revised pay on the basis of Majithia Wage Board is legitimate dues of the claimant and as such the claimant is not willing to forego the same in any manner. The claimant has got calculated his estimate revised salary and arrears of pay from a competent Chartered Accountant as per the Majithia Wage Board recommendations w.e.f. 11.11.2011 to 01.02.2021, as such the total amount of ₹ 95,24,148/- including interest @ 18% per annum is due from the management. Despite the demand of detailed arrears of salary calculated as per Majithia Wage Board recommendations w.e.f. 11.11.2011 to 01.02.2021, the management has intentionally and deliberately not been implementing the recommendations of the Majithia Wage Board and has not given any benefit to the claimant in spite of several oral and written requests. The claimant has not signed any declaration in order to waive of the benefits accrued under the Majithia Wage Board recommendations. The management had indulged in the process of denying the claims stating that the recommendations of the wage board were not applicable on the claimant and other employees and forcing the employees to sign on pre-typed formats and declarations illegally. The employees refusing to do so were being victimized by way of illegal transfer, suspension and other colourable exercise of the powers of the management and a reign of terror inside the establishment had been created by the management. The management be asked to furnish the details of the salary paid to the employee of the establishment before 07.02.2014 and being paid now and the reasons for non-implementation of the recommendations of the Majithia Wage Board by the management. The present claim is without prejudice to the rights of the claimant to the Contempt of Court proceedings against the management for its deliberate, willful and intentional violation of the order dated 07.02.2014 of Hon'ble Supreme Court. The cause of action of the claimant is continuous. As such, the present claim is being filed within period of limitation. The claimant has not filed any other claim or petition before any Court of Law except the present one. The claim application is accompanied with calculation sheet Annexure 'A3'. Prayer is made that Award may be passed directing the managements to implement the Majithia Wage Board recommendations and re-fix the pay of the claimant accordingly with further prayer directing the managements to release arrears of pay to the tune of ₹ 95,24,148/- as per Annexure 'A3' with costs and to pay interest @ 18% on the arrears of pay from the date of its accrual till actual payment.

5. On notice, the management No. 1 & 2 contested the claim application by filing joint written statement on 09.08.2021 wherein preliminary objections are raised on the ground that the workman filed the fresh reference claiming re-fixation of pay and for recovery of ₹ 95,24,148/- as arrears of pay up to 01.02.2021 on account of implementation of recommendations of the Majithia Wage Board vide notification dated 11.11.2011 issued by Central Government by putting the wrong facts as well as by levelling the false allegations and by presenting the fabricated calculation sheet before this Tribunal. The claimant does not fall under the definition of the 'workman' as per Section 2(s)(ii to iv) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*). The claimant has failed to claim himself as 'workman' as per the provisions of the ID Act. As per the nature and status of post, the claimant does not fall within the definition of the 'workman' under the ID Act. The claim statement is liable to be dismissed on account of mis-joinder of the necessary parties as the alleged service rendered by the claimant with the answering management i.e. Chief Manager, HR (who has not been impleaded as party in the present reference) and authorities of Head Office have been impleaded by name. As per the

facts, the recommendations of Majithia Wage Board were submitted to the Central Government on 31.12.2010 and same were notified by the Government of India on 11.11.2011. The said recommendations were put under challenge by various media agencies by way of filing the writ petitions before the Hon'ble Supreme Court of India and the said cases were adjudicated upon before the Hon'ble Supreme Court of India in February 2014. The procedure under the scheme of the Act 1955, aggrieved employee seeking to recover any amount under the Act 1955, is required to first move an application before the State Government. As per Rule 36 of the Act 1955, such an application is required to be made in prescribed Form 'C' addressed to the Secretary to the State Government along with the details of the amount claimed, preceded by a 15 days prior notice regarding payment to the concerned newspaper establishment. In this case, the above said requirement of Rule 36 of the Act 1955 has not been complied with. Hence, the proceeding in question is void *ab-initio*. As per Section 17 of the Act 1955, a Civil Suit does not lie after the expiry of 3 years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2020 for the benefit claimed by the claimant for the year 2011-2021. The claimant has annexed the calculation sheet showing the turn-over of the management only to get the benefit from the management which is a dispute in question of fact and cannot be decided in summary proceedings before this Tribunal. A dispute in question of fact can only be adjudicated upon by the concerned Civil Court. The basis of computation of the amount claimed has not been indicated by the claimant. The identity of the person who has computed the said amount has not been revealed by the claimant. Hence, the same is frivolous and baseless. The answering managements do have the spirit to honour the judgment delivered by the Hon'ble Supreme Court of India but in the present reference the claimant is not entitled to any benefit in compliance of the judgments delivered by the Hon'ble Supreme of India. No amount is due to the claimant under the provisions of Section 17 of the Act 1955. Further the amount claimed is based on non-existing right. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant has voluntarily chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board. Now nothing is payable to the claimant. The claimant had never raised any question nor made any complaint to the management or to any competent authority regarding the undertaking which he had given within the specified time of 3 weeks. Now after lapse of long time the claimant is raising dispute of non-payment of wages as per the Majithia Wage Board recommendations which is a simply after thought, illegal and baseless. No complaint can be entertained after passing almost 9 years of lapse of prescribed period. The employees were informed about the Majithia Wage Board recommendations and para 20(j) of the same for payment of the existing pay scale and existing emoluments by affixing copy of the Majithia Wage Board recommendations and notice on the notice board of the company. The respondent-management DB Corp. Ltd. is a group of businesses including textile, MyFM, digital media, real estate, power and denim. As per the Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted.

6. Further on merits, the contents of para 1 to 5, 7 & 8 are replied being matter of record. It is further stated that the claimant is not entitled for the benefit of compliance of judgment passed by the Hon'ble Supreme Court of India. As per the group of the claimant and class of the Newspaper Establishment the claimant is receiving the wages and other benefits more than the Majithia Wage Board recommendations. The management is having various offices throughout the country and at the time of joining the management the claimant himself gave his consent for his transfer to some other place of work by signing the letter in that regard and the services of the claimant was transferred in a routine manner without any ill-will as per the service rules, but now the claimant is trying to regal out the same by leveling false and frivolous allegations against the management and the same appears to be fiction of the mind of the claimant and the managements reserve their right to initiate appropriate proceedings against the claimant before the competent court of law for leveling false and scandalous allegations against the management. It is specifically denied that the claimant is entitled for revised salary and pay from the management based on the Majithia Wage Board for the period 11.11.2011 to April, 2019. The claimant is not entitled for any financial benefits as well as interest and the claim put forth by the claimant is not a very higher side. The claim is not maintainable in the question-answer form. No cause of action has accrued

to the claimant to file the present claim and the same is hopelessly time barred. Rest of the averments of claim statement are denied as wrong. Prayer is made that the reference may be dismissed with exemplary cost.

7. The claimant filed replication wherein the contents of the written statement except admitted facts are denied being without any basis and frivolous and averments of claim statement are reiterated.

8. From the pleadings of the parties, following were framed vide order dated 27.08.2021:-

1. Whether the arrears of revision of pay to the applicant are to be paid by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the applicant does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
3. Whether the claim of the applicant is bad on the ground of mis-joinder and non-joinder of necessary parties ? OPM
4. Whether the claim of the applicant is time barred ? OPM
5. Whether the claim of the applicant is not maintainable under the provisions of Section 17 of the Working Journalists & Other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 ? OPM
6. Relief.

9. In evidence claimant Parvinder Singh examined AW1 Avdhesh Gaur, who brought the summoned record and proved the copy of the same as Exhibit 'W1/1' to Exhibit 'W1/7'.

Exhibit 'W1/1' is declaration dated 15.11.2011.

Exhibit 'W1/2' is salary break-up dated 27.08.2014.

Exhibit 'W1/3' is annual appraisal for the financial year 2013-14 dated 28.05.2014.

Exhibit 'W1/4' is copy of annual appraisal for the financial year 2014-15 dated 29.07.2015.

Exhibit 'W1/5' is copy of annual appraisal for the financial year 2015-16 dated 01.06.2016.

Exhibit 'W1/6' is copy of annual appraisal for the financial year 2017-18 dated 30.08.2018.

Exhibit 'W1/7' is copy of annual appraisal for the financial year 2018-19 dated 30.04.2019.

10. The claimant examined himself as AW2 and tendered his affidavit Exhibit 'AW2/A' along with copy of documents Exhibit 'AW2/1' and Exhibit 'AW2/2'.

Exhibit 'AW2/1' is Gazette Notification dated 11.11.2011 of Government of India, Ministry of Labour & Employment.

Exhibit 'AW2/2' is calculation sheet of estimated gross salary as per Majithia Wage Board prepared by Chartered Accountant Dhruv Gupta.

11. The claimant examined AW3 Dhruv Gupta, Chartered Accountant, who tendered his affidavit Exhibit 'AW3/A' along with documents Exhibit 'AW3/1' to Exhibit 'AW3/3'.

Exhibit 'AW3/1' is copy of Employees' Provident Fund Member Passbook of Parvinder Singh, bearing Member ID No.PBCHD00209890000000694, bearing establishment ID./Name PBCHD0020989000/DB Corporation Limited, UAN No.100268478678, incorporating employee share ₹ 15,692/- and employer share ₹35,661/- for the period w.e.f. 31.03.2009 to November 2019.

Exhibit 'AW3/2' is copy of Form 23-ACA, pursuant to Section 220 of the Company's Act, 1956.

Exhibit 'AW3/3' is the certificate dated 14.03.2021 issued by Dhruv Gupta, Partner for DGR & Associates Chartered Accountants.

12. On 11.02.2022 the Learned Representative for the claimant closed the evidence of the claimant.

13. On the other hand, the managements examined MW1 Avdhesh Gaur-Assistant Manager HR Admn, Office of Dainik Bhaskar, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M6'.

Exhibit 'M1' is identity card of Avdhesh Guar.

Exhibit 'M2' is authority letter issued in favour of Avdhesh Gaur by DB Corp. Ltd.

Exhibit 'M3' is resignation with acceptance dated 30.01.2023.

Exhibit 'M4' recovery notice dated 11.03.2023.

Exhibit 'M5' is full & final slip for the month of February 2023.

Exhibit 'M6' is declaration dated 15.11.2011.

14. On 25.09.2023 Learned Representative for the management No.1 & 2 closed oral evidence. On 06.11.2023 Learned Representative for management No.1 & 2 closed documentary evidence.

15. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below:-

Issue No. 1:

16. Onus to prove issue No.1 is on the workman.

17. Under this issue, the claimant Parvinder Singh examined himself as AW2 and vide his affidavit Exhibit 'AW2/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW2 has supported his oral version with documents Exhibit 'AW2/1' and Exhibit 'AW2/2'.

18. In order to prove the calculation of the arrears claimed, claimant examined AW3 Dhruv Gupta - Chartered Accountant and Partner of the DRG and Associates Firm, who vide his affidavit Exhibit 'AW3/A' has proved that the calculation sheet prepared by him. AW3 has supported his oral version with documents Exhibit 'AW3/1' to Exhibit 'AW3/3'.

19. The claimant has examined AW1 Avdhesh Gaur - Assistant Manager, HR Admn. Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh, who proved on record documents Exhibit 'W1/1' to Exhibit 'W1/7' (as detailed above).

20. On the other hand, the management has examined MW1 Avdhesh Gaur - Assistant Manager, HR Admn Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh. (MW1 in his testimony referred the management as respondent and in cross-examination of AWs referred the claimant as workman. In order to avoid any ambiguity the workman is hereinafter referred as claimant and the respondent is hereinafter referred as management.) MW1 vide his affidavit Exhibit 'MW1/A' deposed that he is working as Assistant Manager-HR & Admin (CPH2) with the managements and has been authorised by the management to depose on its behalf in this case before this Court. He is well conversant with the facts of the present case. MW1 further deposed that after putting the resignation dated 30.01.2023, on processing his final dues the management came to know about his full & final settlement recovery amounting to ₹ 24,050/-, the intimation of which has been sent vide letter dated 11.03.2023. MW1 further deposed that DB Corp. Ltd. is group of businesses including textile, MY FM, Digital Media, Real Estate, Power, Denim. As per Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per Para 20(j) of the Majithia Wage Board recommendations. The claimant has chosen /opted to retain his existing wages and existing emoluments as per Para 20(j) of the Majithia Wage Board at his own voluntarily by signing a declaration dated 15.11.2011 and after signing the declaration, now nothing is payable to the applicant as he has already received wages according to option opted

by him as per Para 20(j) and opted to retain his current salary and emoluments at that time. All the employees working have given their signatures on option letter as per their will and submitted it to the management. MW1 further deposed that the claimant is not entitled for the benefit of the compliance of the judgment passed by the Hon'ble Supreme Court of India. MW1 has supported his oral version with documents Exhibit 'M1' to Exhibit 'M6'.

21. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly the claimant was appointed as Helper in the Dainik Bhaskar Newspaper on 27.08.2000. The salary of the claimant was fixed @ ₹ 6,000/- per month including all perks and allowances. After completion of probation period of six months, the services of the claimant were regularised. The claimant was re-designated as Unit Attendant on 01.04.2016. The claimant was in the service of the management at the time of filing of the claim application under Section 17(1) of the Act 1955 and during pendency of this industrial dispute reference the workman tendered his resignation on 30.01.2023 / Exhibit 'M3', which was accepted by the management.

22. In the present case, the claimant is demanding arrears of pay as revised according to the recommendations of the Majithia Wage Board w.e.f. 11.11.2011 to October 2019 as per notification dated 11.11.2011 / Exhibit 'AW2/1'. On the other hand, the managements have taken the plea that in view of the option exercised by the claimant under para 20(j) of the notification dated 11.11.2011, the claimant is not entitled to seek benefits of the Majithia Wage Board recommendations.

23. To my opinion, in order to decide whether para 20(j) of notification dated 11.11.2011 is attracted in this case, it would be apposite to go through para 20(j) of the said notification, which is reproduced as below :—

"20(j) The revised pay scales shall become applicable to all employees with effect from 1st July 2010. However, if an employee within three weeks from the date of publication of Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scales and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments."

24. Learned Representative for the claimant argued that declaration Exhibit 'W1/1' is not valid in the eyes of law as it does not bear any passing reference of the designation, employee code, department and place of posting etc. The said declaration is not addressed to any official, countersigned or signed by any witness, without verification, acceptance, place not mentioned and not even attested by any notary. There is no passing reference of the existing wages of the claimant, the said declaration is not voluntarily and has been obtained under duress and under threat of transfer / termination. It is also apparent that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant. It is further argued by Learned Representative for the claimant that the declaration is two sided legal transaction which means there has to be a second party to the declaration. In the present case, the alleged declaration is only signed by the claimant and there is no reference to whom the same is given, furnished. There is no counter-signature of the authority who had accepted it. On the other hand, it is argued by Learned Representative for the managements that the declaration dated 15.11.2011 i.e. Exhibit 'W1/1' is a valid document and by way of exercising option in the form of above said declaration, the claimant has chosen / opted to retain his existing wages and existing emoluments as per Clause 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. Therefore, nothing is payable to the claimant as he has already received wages according to the option opted by him under Clause 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. It is further argued by Learned Representative for the managements that the declaration Exhibit 'W1/1' is of dated 15.11.2011 and till date the claimant has not withdrawn the same alleging that it was obtained under pressure. Much stress has been laid upon the fact that the claimant has not withdrawn the said declaration as it was genuine and signed by him with his free consent. Learned Representative for the management referred case law reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G Diwan** and **2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi**.

25. To my opinion, the argument advanced by Learned Representative for the claimant that declaration Exhibit 'W1/1' is signed by the claimant under pressure of illegal transfer, suspension is devoid of merits because the claimant / AW2 when put to cross-examination stated that he identifies his signatures on Exhibit 'W1/1'. AW2 further stated that the signatures on Exhibit 'W1/1' have been obtained forcibly by Shri Ajay Chhabra, the Area Manager. He has not raised any protest till date in respect of his signatures on Exhibit 'W1/1'. AW2 voluntarily stated that he was threatened that he would be removed from his job if he did not sign Exhibit 'W1/1'. AW2 denied the suggestion as wrong that his volunteer statement is incorrect. AW2 further stated that Mr. Chhabra has threatened him. He has not filed any complaint against Mr. Chhabra before any competent court of law / authority / management. AW2 admitted as correct that Exhibit 'W1/1' was signed on 15.11.2011 and till date he has not raised any protest regarding the same. AW2 voluntarily stated that the said document was signed in the year 2014. AW2 denied the suggestion as wrong that his volunteer statement is incorrect. To my opinion, the claimant's plea that his signatures were forcibly obtained by Shri Ajay Chhabra, Area Manager on declaration dated 15.11.2011 / Exhibit 'W1/1' under threat of transfer and removal from job and that the declaration is ante-dated being actually got signed in the year 2014 does not stand proved because AW2 in his further cross-examination stated that he does not have any proof to substantiate the fact that Exhibit 'W1/1' was got signed from him under force and the same was signed in the year 2014. If for the sake of arguments, it is assumed that the signatures of the claimant on declaration Exhibit 'W1/1' were forcibly obtained, then the claimant would have filed any complaint against Shri Ajay Chhabra, the Area Manager, before any competent Court of Law or Authority or to the management but the same has not been done. Moreover, in the claim statement and affidavit Exhibit 'AW2/A' it has not been mentioned that signatures of the claimant were forcibly obtained in the year 2014 on declaration dated 15.11.2011 in this regard AW2 in his cross-examination admitted as correct that he has not mentioned the factum of signing Exhibit 'W1/1' under force and that too in the year 2014 in his claim as well as his affidavit submitted today. Therefore, the claimant's plea of obtaining his signatures forcibly on declaration Exhibit 'W1/1' subsequently in the year 2014 is not only false but beyond pleadings. The claimant's plea that his signatures on the declaration were obtained in the year 2014 is contrary to the facts pleaded in the claim statement. In the claim statement, the claimant had pleaded that he has not signed any declaration / settlement with any of the managements whatsoever in order to waive off the benefits accrued under the Majithia Wage Board recommendations. In this manner, there is a complete denial of signing any declaration by the claimant in his claim statement. Both the pleas raised by the claimant i.e. non-signing of any declaration and obtaining his signature on declaration in the year 2014 are self-contradictory and destructive to each other. The claimant's witness AW1 Avdhesh Gaur in his cross-examination admitted as correct that at the time of employment, every employee submits his signed declaration similar to Exhibit 'W1/1' voluntarily and the claimant is bound by the terms & conditions of the declaration. The claimant AW2 in his cross-examination has stated that during his entire service with the management he has received his full wages for the period he actually worked with the management. From the discussion made above, it is duly proved on record that the declaration dated 15.11.2011 Exhibit 'W1/1' is signed by the claimant on 15.11.2011 with his free will and consent and after knowing the contents thereof.

26. The claimant's plea that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant is also devoid of merits. There is no illegality, even if, the managements for the convenience of its employees supplied a proforma to exercise option under para 20(j) of notification dated 11.11.2011. It is for the concerned employee herein claimant to fill-in the proforma by exercising his own discretion. Since the claimant has given written declaration dated 15.11.2011 Exhibit 'W1/1', thereby exercised option to retain his existing pay scales and existing emoluments, without any protest, thus the claimant is estopped from seeking the arrears of revised pay as calculated by the Chartered Accountant. The case law referred by Learned Representative for the managements reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G Diwan** and **2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi** are applicable to the present case to an extent.

27. In view of the aforesaid discussion, the claimant is not entitled to receive arrears of revised pay.

28. Accordingly, this issue is decided against the claimant-workman and in favour of management No. 1 & 2.

Issue No. 2:

29. Onus to prove this issue is on the managements.

30. Learned Representative for the management argued that the claimant does not fall within the definition of the 'workman' as defined under Section 2(s) of the ID Act as the nature of the work assigned to the claimant was supervisory. On the other hand, Learned Representative for the claimant argued that the claimant was not having any managerial or supervisory position. The claimant was not having any power to appoint/ dismiss any employee and had no power to grant leave to any employee. To support his arguments Learned Representative for the claimant referred case law reported in **2006(4) SCT 1** titled as *Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shaileshkumar Harshadhbhai Shah* in para 11 to 13 held as below :-

"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

12. Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.

*13. The precise question came up for consideration in *Ananda Bazar Patrika (P) Ltd. v. Workmen* [(1970)3 SCC 248] wherein it was held :*

"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity.....

A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

*Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. *Ananda Bazar Patrika (supra)* was followed by the court in large number of cases."*

31. In the present case, it is undeniable fact that the claimant was appointed to the post of Unit Attendant. The management has failed to bring on record any oral or documentary evidence to show that the workman was discharging any kind of supervisory or managerial or administrative functions. In the absence of aforesaid evidence, it cannot be said that the claimant was exercising powers of control or supervision. The judgment **2006(4) SCT 1 (supra)** is applicable to the facts of the present case to an extent. Consequently, the management has failed to prove that the claimant had any authority to initiate departmental proceedings against the subordinates or he had power of control or supervision in regard to recruitment, promotion etc. The management

even failed to prove that the claimant had authority to sanction leave to any employee. The claimant, therefore, is a 'workman' as defined under Section 2(s) of the ID Act.

32. Accordingly, this issue is decided against management No.1 & 2 and in favour of the claimant-workman.

Issue No. 3 & 5 :

33. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

34. Onus to prove both these issues is on the managements. During course of arguments both these issues are not pressed by the managements.

35. Accordingly, both these issues are decided against management No.1 & 2 and in favour of the claimant-workman.

Issue No. 4 :

36. Onus to prove this issue is on the managements.

37. Learned Representative for the managements contended that the claim statement is time barred. A Civil Suit does not lie after the expiry of three years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in February 2020 for the benefit claimed by the claimant for the year 2011-2021. On the other hand, Learned Representative for the claimant argued that the claimant is seeking his revised pay w.e.f. 01.11.2011, amount of interim relief and arrears of pay with interest @ 18% per annum as per the award given on the recommendations of Majithia Wage Board. On every passing month, the claimant was getting less salary than his due entitlement and on every month a fresh cause of action had arisen in favour of the workman. Whereas the reference to this Tribunal was made by the Assistant Labour Commissioner, U.T. Chandigarh on 28.08.2020. Thus, the claim of the claimant is well within time in as much as the cause of action in the present case is recurring in nature.

38. As proved from the documents on judicial file, the claim raised the application under Section 17(1) of the Act 1955 before the Labour Commissioner, U.T. Chandigarh on 14.02.2020 and the Worthy Secretary Labour, Chandigarh Administration under Section 17(2) of the Act 1955 referred to present dispute for adjudication to this Tribunal / Court vide reference dated 28.08.2020. Moreover, the contention raised by Learned Representative for the claimant carries force as denial of revision of pay and benefits of arrears of pay is a continuing cause giving rise to a recurring cause of action. Therefore, the bar of limitation does not apply.

39. Accordingly, this issue is decided against management No. 1 & 2 and in favour of the claimant-workman.

Relief :

40. In the view of foregoing finding on the issue No.1 above, this reference is declined and answered against the claimant-workman. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 06.11.2023.

**CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**

Notification

The 2nd February, 2024

No. 13/1/9753-HII(2)-2024/ 1867.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **65/2020** dated **06.11.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAM DHIRAJ R/O H.NO.143, MOH. GILZIAN, WARD NO.8, BASSI PATHANA, FATEHGARH SAHIB, PUNJAB - 140412 (Workmen)

AND

1. M/S DAINIK BHASKAR CORPORATION LIMITED, PLOT NO.280, SARKHEJ GHANDINAGAR HIGHWAY, NEAR YMCA CLUB, MAKARBA, AHMEDABAD, GUJARAT - 380051 THROUGH ITS MANAGING DIRECTOR.
2. M/S DAINIK BHASKAR CORPORATION LIMITED, CHANDIGARH UNIT, PLOT NO.11-12, GROUND FLOOR, DAKSHIN MARG, SECTOR 25, CHANDIGARH - 160036 THROUGH ITS CHIEF EXECUTIVE. (Management)

AWARD

1. Vide Endorsement No.13/1/9753-HII(2)-2020/11456 dated 28.08.2020 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court /Tribunal on the claim application filed by Ram Dhiraj (*hereinafter referred "claimant"*) to the M/s Dainik Bhaskar Corporation Limited & Another (*hereinafter referred "management"*) under Section 17(1) of the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (*hereinafter in short referred "Act 1955"*) in following words :-

"Whether the arrears of revision of pay to Sh. Ram Dhiraj, Resident of H.No.143, Moh. Gilzian, Ward No.8, Bassi Pathana, Fatehgarh Sahib, Punjab - 140412 (Workman/ applicant) were to be paid by M/s Dainik Bhaskar Corporation Limited, Plot No.280, Sarkhej Ghandinagar Highway, Near YMCA Club, Makarba, Ahmedabad, Gujarat - 380051 through its Managing Director and M/s Dainik Bhaskar Corporation Limited, Chandigarh Unit, Plot No.11-12, Ground Floor, Dakshin Marg, Sector 25, Chandigarh - 160036 through its Chief Executive (Managements) according to the recommendations of the Majithia Wage Board and also as per the direction of the Hon'ble Supreme Court of India under The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provision Act, 1955 and in compliance of the orders dated 28.04.2015, 12.01.2016, 14.03.2016, 23.08.2016 passed by the Hon'ble Supreme Court of India in CCP No.128/2015 and 129/2015 AND WP (Civil) 246/2011 dated 07.02.2014; if so, to what effect and to what relief he is entitled to, if any ?"

2. Upon notice, the claimant-workman appeared through his Representative Shri Ajay Sharma. Statement of claim was filed on 26.03.2021.

3. Briefly stated the averments of claim statement are that the claimant was working as Machine Helper with Dainik Bhaskar Newspaper having its registered office at Sector 25, Chandigarh. On account of revision of pay & other allowances accrued on the acceptance of the recommendations of the Majithia Wage Board which were accepted by the Government of India and notified in the Gazette of India on 11.11.2011,

a substantial amount is due from Dainik Bhaskar / employer which is denied. On account of fact that a large number of persons are employed in the various newspapers and periodical being published in India and such newspaper or periodical establishment had devised its own way of employing persons to run its working, the Government of India constituted the Press Commission to enquire into the conditions of employment of working journalists. The Press Commission made certain recommendations for improvement and regulation of such service conditions by means of legislation. Accordingly, The Working Journalists (Conditions of Service) and Miscellaneous Provisions Bill was introduced in the Parliament. Consequently, on 20.12.2015 the Act 1955 was enacted to regulate certain conditions of service including minimum period of notice, gratuity, provident fund, settlement of industrial dispute, leave with pay, hours of work and minimum wages of the Working Journalists and the other persons employed in the Newspaper Establishments. From the harmonious joint reading of the provisions of the Act 1955, it is apparent that the Central Government has been competent to fix and revise the wages of the journalists and other employees having been governed by the Act 1955. A procedure has been laid down for fixing and revising rate of wages for which a mandate is casted upon the Central Government to constitute a Wage Board in the manner prescribed in it, which shall examine all the relevant factors like cost of living, the prevalent rate of wages for comparable employment etc. for the ascertainment of the rate of wages and thereafter present its recommendation to the Central Government. On the receipt of such recommendation by the Wage Board, the Central Government is also competent to accept, reject and alter any of the recommendations as may deemed fit. Consequently, the Central Government shall notify the recommendations by way of an Award in the official Gazette of India. In pursuance to an exercise undertaken by Department of Labour and Employment, Union of India under Section 9 of Act 1955, the purpose of enabling the Central Government to fix or revise rate of wages for the working journalists and non-journalists newspaper employees, a Wage Board was constituted under the Chairmanship of Hon'ble Mr. Justice G. R. Majithia (Retd.) and the Wage Board was commonly known as Majithia Wage Board. After examining all the relevant factors regulating the revision of pay and affording opportunity to all the affected parties, the Majithia Wage Board finally submitted its recommendations on 31.12.2010 to the Union of India. On 25.10.2011 the Union of India accepted the same in toto without any modification. The said recommendations were further notified in the official Gazette vide notification dated 11.11.2011. On the publication of the recommendation of the Majithia Wage Board by way of an Award vide Gazette Notification dated 11.11.2011, various newspaper establishments and media houses vide W.P. (C) No.538 of 2011 had made a challenge under Article 32 of the Constitution of India before the Hon'ble Supreme Court of India alleging Act 1955 being ultra-vires as it infringes the fundamental rights guaranteed under Article 14, 19(1)(a) and 19(1)(g) of the Constitution of India. There was also a challenge to the validity of notification dated 11.11.2011 issued by the Union of India. The bunch of aforesaid petitions remained pending for hearing before the Hon'ble Apex Court for 3 years and ultimately while disagreeing with the contentions raised by the newspaper establishments and media houses, the Hon'ble Apex Court dismissed all the petitions vide its judgment dated 07.02.2014 while holding that the recommendations of Majithia Wage Board are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India. Despite the dismissal of the Writ Petitions challenging the validity of Act 1955 and notification dated 11.11.2011, and further directions of the Hon'ble Apex Court for payment of arrears, no compliance was being made by the news agencies. The employees had also taken up their issue before the management No.1 & 2 for payment of revised wages and arrears as per the directions of the Hon'ble Apex Court, however, they were told that a review application have been preferred by them and further course of action would be taken up after its adjudication. Another order dated 13.10.2017 was passed by the Hon'ble Apex Court clarifying the previous judgment dated 19.06.2017 to the extent that the disputes referred to adjudication under Section 17(2) of the Act 1955, will be disposed of by the concerned Labour Court / Industrial Tribunal as expeditiously as possible preferably within six months of the reference being made.

4. It is further averred that the claimant was appointed as Machine Helper in the Production Division of Dainik Bhaskar Newspaper on 04.08.2011. The salary of the claimant was fixed @ ₹ 11,999/- per month including all perks and allowances. Initially he was on probation for 6 months and later on his services were regularised. The services of the claimant were being regulated under the Act 1955. On minute perusal of

the notification, it is apparent that employees have been categorised in groups and as such the claimant falls within the ambit of working non-journalists being 'Helper' which is mentioned in Group 6 Factory Staff of the Schedule - III (Grouping of Non-journalists Newspaper Employees - Factory Staff). In the month of February 2019 the claimant along with other employees has also been cautioned by the management that in case, they press upon their demand of recovery of dues, then they would be either transferred at other far distant places or their services would be terminated. The amount which is liable to be recovered from the management based on revised pay on the basis of Majithia Wage Board is legitimate dues of the claimant and as such the claimant is not willing to forego the same in any manner. The claimant has got calculated his estimate revised salary and arrears of pay from a competent Chartered Accountant as per the Majithia Wage Board recommendations w.e.f. 11.11.2011 to 01.02.2021, as such the total amount of ₹ 79,48,331/- including interest @ 18% per annum is due from the management. Despite the demand of detailed arrears of salary calculated as per Majithia Wage Board recommendations w.e.f. 11.11.2011 to 01.02.2021, the management has intentionally and deliberately not been implementing the recommendations of the Majithia Wage Board and has not given any benefit to the claimant in spite of several oral and written requests. The claimant has not signed any declaration in order to waive of the benefits accrued under the Majithia Wage Board recommendations. The management had indulged in the process of denying the claims stating that the recommendations of the wage board were not applicable on the claimant and other employees and forcing the employees to sign on pre-typed formats and declarations illegally. The employees refusing to do so were being victimized by way of illegal transfer, suspension and other colourable exercise of the powers of the management and a reign of terror inside the establishment had been created by the management. The management be asked to furnish the details of the salary paid to the employee of the establishment before 07.02.2014 and being paid now and the reasons for non-implementation of the recommendations of the Majithia Wage Board by the management. The present claim is without prejudice to the rights of the claimant to the Contempt of Court proceedings against the management for its deliberate, willful and intentional violation of the order dated 07.02.2014 of Hon'ble Supreme Court. The cause of action of the claimant is continuous. As such, the present claim is being filed within period of limitation. The claimant has not filed any other claim or petition before any Court of Law except the present one. The claim application is accompanied with calculation sheet Annexure 'A3'. Prayer is made that Award may be passed directing the managements to implement the Majithia Wage Board recommendations and re-fix the pay of the claimant accordingly with further prayer directing the managements to release arrears of pay to the tune of ₹ 79,48,331/- as per Annexure 'A3' with costs and to pay interest @ 18% on the arrears of pay from the date of its accrual till actual payment.

5. On notice, the management No. 1 & 2 contested the claim application by filing joint written statement on 30.07.2021 wherein preliminary objections are raised on the ground that the workman filed the fresh reference claiming re-fixation of pay and for recovery of ₹ 79,48,331/- as arrears of pay up to 01.02.2021 on account of implementation of recommendations of the Majithia Wage Board vide notification dated 11.11.2011 issued by Central Government by putting the wrong facts as well as by levelling the false allegations and by presenting the fabricated calculation sheet before this Tribunal. The claimant does not fall under the definition of the 'workman' as per Section 2(s)(ii to iv) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*). The claimant has failed to claim himself as 'workman' as per the provisions of the ID Act. As per the nature and status of post, the claimant does not fall within the definition of the 'workman' under the ID Act. The claim statement is liable to be dismissed on account of mis-joinder of the necessary parties as the alleged service rendered by the claimant with the answering management i.e. Chief Manager, HR (who has not been impleaded as party in the present reference) and authorities of Head Office have been impleaded by name. As per the facts, the recommendations of Majithia Wage Board were submitted to the Central Government on 31.12.2010 and same were notified by the Government of India on 11.11.2011. The said recommendations were put under challenge by various media agencies by way of filing the writ petitions before the Hon'ble Supreme Court of India and the said cases were adjudicated upon before the Hon'ble Supreme Court of India in February 2014. The procedure under the scheme of the Act 1955, aggrieved employee seeking to recover any amount under the Act 1955, is required to first move an application before the State Government. As per Rule 36 of the Act 1955, such an application is required to be made in prescribed Form 'C' addressed to the Secretary to the State

Government along with the details of the amount claimed, preceded by a 15 days prior notice regarding payment to the concerned newspaper establishment. In this case, the above said requirement of Rule 36 of the Act 1955 has not been complied with. Hence, the proceeding in question is void ab-initio. As per Section 17 of the Act 1955, a Civil Suit does not lie after the expiry of 3 years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in 2020 for the benefit claimed by the claimant for the year 2011 to 2021. The claimant has annexed the calculation sheet showing the turn-over of the management only to get the benefit from the management which is a dispute in question of fact and cannot be decided in summary proceedings before this Tribunal. A dispute in question of fact can only be adjudicated upon by the concerned Civil Court. The basis of computation of the amount claimed has not been indicated by the claimant. The identity of the person who has computed the said amount has not been revealed by the claimant. Hence, the same is frivolous and baseless. The answering managements do have the spirit to honour the judgment delivered by the Hon'ble Supreme Court of India but in the present reference the claimant is not entitled to any benefit in compliance of the judgments delivered by the Hon'ble Supreme of India. No amount is due to the claimant under the provisions of Section 17 of the Act 1955. Further the amount claimed is based on non-existing right. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant has voluntarily chosen /opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board. Now nothing is payable to the claimant. The claimant had never raised any question nor made any complaint to the management or to any competent authority regarding the undertaking which he had given within the specified time of 3 weeks. Now after lapse of long time the claimant is raising dispute of non-payment of wages as per the Majithia Wage Board recommendations which is a simply after thought, illegal and baseless. No complaint can be entertained after passing almost 8 years of lapse of prescribed period. Since the year 1956 various Wage Boards have been constituted from time to time and the option has been given to the employees to opt for payment of existing pay scale and existing emoluments in all the three various Wage Boards. The Majithia Wage Board was finally notified on 11.11.2011. The employees were informed about the Majithia Wage Board recommendations and para 20(j) of the same for payment of the existing pay scale and existing emoluments by affixing copy of the Majithia Wage Board recommendations and notice on the notice board of the company. The employees have themselves opted to sign 20(j) of the Majithia Wage Board recommendations on their own accord and free will after well understanding the Majithia Wage Board recommendations. The allegations that employees signed 20(j) under coercion is totally false and baseless. The plea is beyond period of limitation. The plea of coercion is not tenable under Order VI Rule 4 CPC. The validity of para 20(j) of the Majithia Wage Board recommendations has not been challenged separately by any employees of any newspaper establishment even after 11.01.2014. The management DB Corp. Ltd. is a group of businesses including textile, MyFM, digital media, real estate, power and denim. As per the Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted.

6. Further on merits, the contents of para 1 to 5, 7 & 8 are replied being matter of record. It is stated that the claimant is not entitled for the benefit of compliance of judgment passed by the Hon'ble Supreme Court of India. As per the group of the claimant and class of the Newspaper Establishment the claimant is receiving the wages and other benefits more than the Majithia Wage Board recommendations. The management is having various offices throughout the country and at the time of joining the management the claimant himself gave his consent for his transfer to some other place of work by signing the letter in that regard and the services of the claimant was transferred in a routine manner without any ill-will as per the service rules, but now the claimant is trying to regal out the same by leveling false and frivolous allegations against the management and the same appears to be fiction of the mind of the claimant and the managements reserve their right to initiate appropriate proceedings against the claimant before the competent court of law for leveling false and scandalous allegations against the management. It is specifically denied that the claimant is entitled for revised salary and pay from the management based on the Majithia Wage Board for the period 11.11.2011 to 01.02.2021. The claimant is not entitled for any financial benefits as well as interest and the claim put forth by the claimant is not a very higher side. The claim is not maintainable in the question-answer form. No cause of action has accrued to the claimant to file the present claim and the same is hopelessly time barred. Rest of the averments of claim statement are denied as wrong. Prayer is made that the reference may be dismissed with exemplary cost.

7. The claimant filed replication wherein the contents of the written statement except admitted facts are denied being without any basis and frivolous and averments of claim statement are reiterated.

8. From the pleadings of the parties, following were framed vide order dated 16.08.2021:—

1. Whether the arrears of revision of pay to the applicant are to be paid by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the applicant does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
3. Whether the claim of the applicant is bad on the ground of mis-joinder and non-joinder of necessary parties ? OPM
4. Whether the claim of the applicant is time barred ? OPM
5. Whether the claim of the applicant is not maintainable under the provisions of Section 17 of the Working Journalists & Other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 ? OPM
6. Relief.

9. In evidence claimant Ram Dhiraj examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with copy of documents Exhibit 'AW1/1' and Exhibit 'AW1/2'.

Exhibit 'AW1/1' is Gazette Notification dated 11.11.2011 of Government of India, Ministry of Labour & Employment.

Exhibit 'AW1/2' is calculation sheet of estimated gross salary as per Majithia Wage Board prepared by Chartered Accountant Dhruv Gupta.

10. The claimant examined AW2 Dhruv Gupta, Chartered Accountant, who tendered his affidavit Exhibit 'AW2/A' along with documents Exhibit 'AW2/1' to Exhibit 'AW2/3'.

Exhibit 'AW2/1' is copy of compensation details of claimant Ram Dhiraj.

Exhibit 'AW2/2' is copy of Form 23-ACA, pursuant to Section 220 of the Company's Act, 1956.

Exhibit 'AW2/3' is the certificate dated 14.03.2021 issued by Dhruv Gupta, Partner for DGR & Associates Chartered Accountants.

11. The claimant also examined AW3 Avdhesh Gaur, who brought the summoned record and proved the copy of the same Exhibit 'AW3/1' to Exhibit 'AW3/6'.

Exhibit 'AW3/1' is letter dated 28.05.2014 whereby annual cost to company (CTC) of the claimant was revised w.e.f. April 1, 2014.

Exhibit 'AW3/2' is annual appraisal letter dated 29.07.2015 with Annexure 'A' for the financial year 2014-15.

Exhibit 'AW3/3' is annual appraisal letter dated 31.05.2016 with Annexure 'A' for the financial year 2015-16.

Exhibit 'AW3/4' is annual appraisal letter dated 30.08.2018 with Annexure 'A' for the financial year 2017-18.

Exhibit 'AW3/5' is annual appraisal letter dated 30.04.2019 with Annexure 'A' for the financial year 2018-19.

Exhibit 'AW3/6' is offer letter dated 04.08.2011 with Annexure.

12. On 16.11.2022 the Learned Representative for the claimant closed the evidence of the claimant.

13. On the other hand, the managements examined MW1 Avdhesh Gaur-Assistant Manager HR Admn, Office of Dainik Bhaskar, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M3'.

Exhibit 'M1' is identity card of Avdhesh Gaur.

Exhibit 'M2' is authority letter issued in favour of Avdhesh Gaur by DB Corp. Ltd.

Exhibit 'M3' is declaration dated 15.11.2011.

14. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide **Exhibit 'MX'**. It is pertinent to mention here that Exhibit 'M1' is numbered twice i.e. identity card of Avdhesh Gaur is numbered as Exhibit 'M1' and declaration dated 15.11.2011 put by the management to AW1 in his cross-examination as Exhibit 'M1'. In order to avoid any ambiguity, the identity card of Avdhesh Gaur is renumbered and hereafter referred as 'M1/A'.

15. On 14.08.2023 Learned Representative for the management No.1 & 2 closed oral evidence. On 06.11.2023 Learned Representative for management No.1 & 2 closed documentary evidence.

16. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below:-

Issue No. 1:

17. Onus to prove issue No.1 is on the workman.

18. Under this issue, the claimant Ram Dhiraj examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW1 has supported his oral version with documents Exhibit 'AW1/1' and Exhibit 'AW1/2'.

19. In order to prove the calculation of the arrears claimed, claimant examined AW2 Dhruv Gupta - Chartered Accountant and Partner of the DRG and Associates Firm, who vide his affidavit Exhibit 'AW2/A' has proved that the calculation sheet prepared by him. AW2 has supported his oral version with documents Exhibit 'AW2/1' to Exhibit 'AW2/3'.

20. The claimant has examined AW3 Avdhesh Gaur - Assistant Manager, HR Admn. Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh, who proved on record documents Exhibit 'AW3/1' to Exhibit 'AW3/6' (as detailed above).

21. On the other hand, the management has examined MW1 Avdhesh Gaur - Assistant Manager, HR Admn Deptt. Dainik Bhaskar, Sector 25-D, Chandigarh. (MW1 in his testimony referred the management as respondent and in cross-examination of AWs referred the claimant as workman. In order to avoid any ambiguity the workman is hereinafter referred as claimant and the respondent is hereinafter referred as management.) MW1 vide his affidavit Exhibit 'MW1/A' deposed that he is working as Assistant Manager-HR & Admin (CPH2) with the managements and has been authorised by the management to depose on its behalf in this case before this Court. He is well conversant with the facts of the present case. MW1 further deposed that DB Corp. Ltd. is group of businesses including textile, MY FM, Digital Media, Real Estate, Power, Denim. As per Majithia Wage Board recommendations only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. The management has fully complied with the provisions of Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. The claimant had already received the wages as per Para 20(j) of the Majithia Wage Board recommendations. The claimant has chosen / opted to retain his existing wages and existing emoluments as per Para 20(j) of the Majithia Wage Board at his own voluntarily by signing a declaration dated 15.11.2011 and after signing the declaration, now nothing is payable to the applicant as he has already received wages according to option opted by him as per Para 20(j) and opted to retain his current salary and emoluments at that time. All the employees working have given their signatures on option letter as per their will and submitted it to the management. MW1 further deposed that the claimant is not entitled for the benefit of the compliance of the judgment passed by the Hon'ble Supreme Court of India. MW1 has supported his oral version with documents Exhibit 'M1' to Exhibit 'M3'.

22. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly the claimant was appointed as Machine Helper in the Dainik Bhaskar Newspaper on 04.08.2011. The salary of the claimant was fixed @ ₹ 11,999/- per month including all perks and allowances. After completion of probation period of six months, the services of the claimant were regularised. The claimant is still in the service of the management.

23. In the present case, the claimant is demanding arrears of pay as revised according to the recommendations of the Majithia Wage Board w.e.f. 11.11.2011 to 01.02.2021 as per notification dated 11.11.2011 / Exhibit 'AW1/1'. On the other hand, the managements have taken the plea that in view of the option exercised by the claimant under para 20(j) of the notification dated 11.11.2011, the claimant is not entitled to seek benefits of the Majithia Wage Board recommendations.

24. To my opinion, in order to decide whether para 20(j) of notification dated 11.11.2011 is attracted in this case, it would be apposite to go through para 20(j) of notification is reproduced as below:—

"20(j) The revised pay scales shall become applicable to all employees with effect from 1st July 2010. However, if an employee within three weeks from the date of publication of Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scales and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments."

25. Learned Representative for the claimant argued that declaration Exhibit 'M1' / Exhibit 'M3' is not valid in the eyes of law as it does not bear any passing reference of the designation, employee code, department and place of posting etc. The said declaration is not addressed to any official, countersigned or signed by any witness, without verification, acceptance, place not mentioned and not even attested by any notary. There is no passing reference of the existing wages of the claimant, the said declaration is not voluntarily and has been obtained under duress and under threat of transfer / termination. It is also apparent that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant. It is further argued by Learned Representative for the claimant that the declaration is two-sided legal transaction which means there has to be a second party to the declaration. In the present case, the alleged declaration is only signed by the claimant and there is no reference to whom the same is given, furnished. There is no counter-signature of the authority who had accepted it. On the other hand, it is argued by Learned Representative for the management that the declaration dated 15.11.2011 i.e. Exhibit 'M1' / Exhibit 'M3' is a valid document and by way of exercising option in the form of above said declaration, the claimant has chosen / opted to retain his existing wages and existing emoluments as para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. Therefore, nothing is payable to the claimant as he has already received wages according to the option opted by him under para 20(j) of the Majithia Wage Board Recommendations notified on 11.11.2011. It is further argued by Learned Representative for the management that the declaration Exhibit 'M1' / Exhibit 'M3' is of dated 15.11.2011 and till date the claimant has not withdrawn the same alleging that it was obtained under pressure. Much stress has been laid upon the fact that the claimant has not withdrawn the said declaration as it was genuine and signed by him with his free consent. Learned Representative for the management referred case law reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G Diwan** and **2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi**.

26. To my opinion, the argument advanced by the Learned Representative for the claimant that declaration Exhibit 'M1' / Exhibit 'M3' is signed by the claimant under pressure of illegal transfer, suspension is devoid of merits because the claimant / AW1 when put to cross-examination stated that he identify his signatures on declaration dated 15.11.2011 and copy of the declaration is Exhibit 'M1'. Claimant's witness AW3 Avdhesh Gaur in his cross-examination admitted as correct that during his service with the management the claimant has signed a declaration dated 15.11.2011 and the copy of the same is Exhibit 'M1'. AW3 admitted as correct that Exhibit 'M1' is part of the service guidelines of the claimant. The claimant has not raised any claim for grant of Majithia Wage Board. As per the record the claimant has never raised any protest and never reserved his right for claiming the benefits of Majithia Wage Board at the time of receiving any salary from the management.

AW1 / claimant in his cross-examination stated that from the date of his joining till date, he has been given his due salary except Majithia Wage Board. While receiving salary, he did not reserve his right to receive the benefits of Majithia Wage Board at later stage. AW1 admitted as correct that from the date of his joining till date he has not been transferred. From the aforesaid version of AWs it is duly proved on record that declaration dated 15.11.2011 / Exhibit 'M1' / Exhibit 'M3' is signed by the claimant with his free will and consent without any protest and after knowing the contents thereof. Moreover, the claimant has failed to controvert the fact that before obtaining option under para 20(j) of notification dated 11.11.2011 the management had put the notice dated 12.11.2011 / Exhibit 'MX' on the notice board to apprise its employees about their right to exercise the option. MW1 Avdhesh Gaur in his cross-examination has brought copy of notice dated 12.11.2011 vide Exhibit 'MX'. MW1 has denied the suggestion as wrong that notice is prepared afterwards. As per the settled law the suggestion denied by a witness is no evidence unless proved otherwise. The claimant has failed to bring on record any evidence to controvert the genuineness of notice Exhibit 'MX'. The claimant's plea that the management used to obtain signatures on blank papers while joining of the employees is denied as wrong by MW1 in his cross-examination. It is settled law that the suggestion denied by witness is no evidence unless proved otherwise. In the present case, the claimant failed to prove that at the time of joining his signatures were obtained on blank paper by the management. In this regard, AW1 in his cross-examination voluntarily stated that he used to sign in English language as well as Punjabi language. The aforesaid version of AW1 would prove that the claimant is literate person. No literate person or a man of ordinary prudence would sign any blank paper or would sign any writing without going through the contents thereof.

27. AW1 in para 11 of his affidavit has pleaded that in the month of February 2019, he along with other employees have been cautioned by the management that in case, they press upon their demand of recovery of dues then they would be either transferred at other far distant places or their services would be terminated. To my opinion, the aforesaid plea taken by the claimant in para 11 of his affidavit does not stand proved because when put to cross-examination AW1 stated that he has written in his affidavit that in February 2019 he was issued warning. He did not lodge any complaint with the police and did not move any application in any Court in this regard. Moreover, AW1 in his cross-examination stated that from the date of his joining till date he has not been transferred. It is undeniable fact that the claimant is still in the service of the management.

28. The claimant's plea that cyclostyle pre-typed declaration is prepared and signed by the claimant in as much as only blanks are filled by the claimant is also devoid of merits. There is no illegality, even if, the managements for the convenience of its employees supplied a proforma to exercise option under para 20(j) of notification dated 11.11.2011. It is for the concerned employee herein claimant to fill-in the proforma by exercising his own discretion. Since the claimant has given written declaration dated 15.11.2011 Exhibit 'M1' / Exhibit 'M3', thereby exercised option to retain his existing pay scales and existing emoluments, without any protest, thus the claimant is estopped from seeking the arrears of revised pay as calculated by the Chartered Accountant. The case law referred by Learned Representative for the managements reported in **1996(3) SCT 597** titled as **V. M. Gadre (Dead) by LRs Versus M.G Diwan** and **2005(8) SCC 49** titled as **State of Uttranchal Versus Jagpal Singh Tyagi** are applicable to the present case to an extent.

29. In view of the aforesaid discussion, the claimant is not entitled to receive arrears of revised pay.

30. Accordingly, this issue is decided against the claimant-workman and in favour of management No. 1 & 2.

Issue No. 2:

31. Onus to prove this issue is on the managements.

32. Learned Representative for the management argued that the claimant does not fall within the definition of the 'workman' as defined under Section 2(s) of the ID Act as the nature of the work assigned to the claimant was supervisory. On the other hand, Learned Representative for the claimant argued that the claimant did not possess any managerial or supervisory position. The claimant is not possessing any power to appoint

/ dismiss any employee and also did not have power to grant leave to any employee. To support his arguments Learned Representative for the claimant referred case law reported in **2006(4) SCT 1** titled as **Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shaileshkumar Harshadbhai Shah** in para 11 to 13 held as below:-

"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

12. Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.

*13. The precise question came up for consideration in **Ananda Bazar Patrika (P) Ltd. v. Workmen I(1970)3 SCC 248J** wherein it was held :*

"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity.....

A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

*Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. **Ananda Bazar Patrika (supra)** was followed by the court in large number of cases."*

33. In the present case, it is undeniable fact that the claimant was appointed to the post of Machine Helper. The management has failed to bring on record any oral or documentary evidence to show that the workman was discharging any kind of supervisory or managerial or administrative functions. In the absence of aforesaid evidence, it cannot be said that the claimant was exercising powers of control or supervision. The judgment **2006(4) SCT 1 (supra)** is applicable to the facts of the present case to an extent. Consequently, the management has failed to prove that the claimant had any authority to initiate departmental proceedings against the subordinates or he had power of control or supervision in regard to recruitment, promotion etc. The management even failed to prove that the claimant had authority to sanction leave to any employee. The claimant, therefore, is a 'workman' as defined under Section 2(s) of the ID Act.

34. Accordingly, this issue is decided against management No. 1 & 2 and in favour of the claimant-workman.

Issue No. 3 &5:

35. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

36. Onus to prove both these issues is on the managements. During course of arguments both these issues are not pressed by the managements.

37. Accordingly, both these issues are decided against management No. 1 & 2 and in favour of the claimant-workman.

Issue No.4 :

38. Onus to prove this issue is on the managements.

39. Learned Representative for the managements contended that the claim statement is time barred. A Civil Suit does not lie after the expiry of three years of the cause of action. In the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh in 2020 for the benefit claimed by the claimant for the period i.e. from the year 2011 to 2021. On the other hand, Learned Representative for the claimant argued that the claimant is seeking his revised pay w.e.f. 01.11.2011, amount of interim relief and arrears of pay with interest @ 18% per annum as per the award given on the recommendations of Majithia Wage Board. On every passing month, the claimant was getting less salary than his due entitlement and on every month a fresh cause of action had arisen in favour of the workman. Whereas the reference to this Tribunal was made by the Assistant Labour Commissioner, U.T. Chandigarh on 28.08.2020. Thus, the claim of the claimant is well within time in as much as the cause of action in the present case is recurring in nature.

40. As proved from the documents on judicial file, the claim raised the application under Section 17(1) of the Act 1955 before the Assistant Labour Commissioner, U.T. Chandigarh on 26.02.2020 and the Worthy Secretary Labour, Chandigarh Administration under Section 17(2) of the Act 1955 referred to present dispute for adjudication to this Tribunal / Court vide reference dated 28.08.2020. Moreover, the contention raised by Learned Representative for the claimant carries force as denial of revision of pay and benefits of arrears of pay is a continuing cause giving rise to a recurring cause of action. Therefore, the bar of limitation does not apply.

41. Accordingly, this issue is decided against management No. 1 & 2 and in favour of the claimant-workman.

Relief :

42. In the view of foregoing finding on the issue No.1 above, this reference is declined and answered against the claimant-workman. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Sheela, W/o Madan Lal, R/o H. No. 4019, Mauli Jagran Complex, Chandigarh, have changed my name from Sheela to Sheela Vashist.

[220-1]

I, Sanyogita, W/o Manish Sharma, R/o # 131B, Khuda Alisher, U.T. Chandigarh, have changed my name to Sanyogita Rani.

[221-1]

I, Shalu Dhakar, D/o Dharm Pal, R/o H. No. 4032, Sector 46-D, Chandigarh, have changed my name to Shalu.

[222-1]

मैं, Ranjodh Singh, पुत्र जगजीत सिंह, निवासी 2252, सेक्टर 51-सी, चंडीगढ़, ने अपना नाम Ranjodh Singh से बदलकर Ranjodh Singh Chhokar रख लिया है।

[223-1]

I, Bipan Jagotta, S/o Late Sh. Balwant Rai Jagotta, R/o # 128, Sector 21-A, Chandigarh, have changed my name from Bipan Jagotta to Bipan Kumar Jagotta. All Concerned please note.

[224-1]

I, Rahul Gupta, S/o Sh. Subhash Deo Gupta, R/o # 1310, Progressive Society, Sector 50-B, Chandigarh, have changed the name of my minor son from Anmol Gupta to Shaurya Gupta.

[225-1]

I, Harshdeep Singh, S/o Jasbir Singh, R/o # 237A, Sector 51-A, Chandigarh, have changed my name from Harshdeep Singh to Harshdeep Singh Saini.

[226-1]

I, Vijay Kumar *alias* Vijay Singh, S/o Umrao Singh, R/o # 2265, Vikas Nagar, Mouli Jagran, Chandigarh, have changed my name to Vijay Kumar.

[227-1]

I, Mohammad Fakhrudin, S/o Nur Husan, House No. 80, Near Ravidas Gurudwara, Sector 45, Burail, Chandigarh, have changed my name to Fakhruddin Ansari.

[228-1]

I, Joginder Sharma, S/o Govind Sharma, R/o # 424/2, Sector 45-A, Chandigarh, have changed my name to Yogender Sharma.

[229-1]

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